



Crl.A(MD)No.873 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.02.2023

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)No.873 of 2022

A.Kanagaraj @ Rasukutty

**...Appellant/Petitioner /
Accused No.12**

Vs.

**1.The State rep. by
The Deputy Superintendent of Police,
Thoothukudi South Police Station,
Thoothukudi.
In Crime No.533 of 2019.**

**... 1st Respondent/ 1st Respondent /
Complainant**

2.P.K.Ramkumar

**...2nd Respondent/ 2nd Respondent
Defacto Complainant**

Prayer : This Appeal is filed under Section 14A(2) of the Scheduled Castes and the Scheduled Tribes (Amendment Act), 2015, to set aside the order of Special Court for Trial of Cases under SC/ST (PoA) Act, Thoothukudi made in Crl.M.P.No.1677 of 2022 in S.C.No.62 of 2020 dated 28.11.2022 and allow this appeal by enlarging the appellant on file in connection with Crime No.533 of 2019 on the file of the first respondent.

For appellant : Mr. Haroon Rasheed. D.S

**For R-1 : Mr. B.Nambiselvan
Additional Public Prosecutor**

**For R-2 : Mr. G.Thalai Mutharasu
for Mr.A.S.Vaigunth**



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J U D G M E N T

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This Criminal Appeal has been filed to set aside the order of the Special Court for Trial of Cases under SC/ST (PoA) Act, Thoothukudi, made in Crl.M.P.No.1677 of 2022 in S.C.No.62 of 2020 dated 28.11.2022 and allow this appeal by enlarging the appellant on file in connection with Crime No.533 of 2019 on the file of the first respondent.

2. Case of the prosecution in brife:

The accused in Final Report belongs to various communities such as Naadar, Paravar, Yadhavar, Kammalar, Maravar, Chettiyar and Vellalar. The deceased Sivakumar was living in Ayyanadaippu village in 2005. One Athipazham was murdered by the above said Sivakumar and his friends namely Kumar, Murugan. Over which, a case was registered and the trial was conducted by the learned II Additional District and Sessions Judge, Thoothukudi. The Accused Nos.1, 19, 21 are brothers of said Athipalam and the accused No.20 is brother in law of said Athipalam and other accused are friends of the first accused.

3. On 21.08.2019 at 10.00 a.m., when the defacto complainant and the deceased Sivakumar came to the District Court, Thoothukudi, for attending



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the case hearing, at that time, some of the unidentifiable persons proceeded towards them with deadly weapons, assaulted them, when the deceased tried to escape, all of them said to have surrounded the deceased, attacked him with deadly weapons, thereby caused severe injuries and subsequently, he died in the hospital.

4. It is the case of retaliatory murder as set out in the preamble portion. The alleged murder that took place was the second murder in sequence of events, in which the deceased Sivakumar was involved in murdering one Athipalam. In respect of the murder case of the above said Athipalam, case was registered against the deceased Sivakumar, Kannan and one Murugan. The above said case was registered on the file of the Pudukkottai Police Station and later, it was transferred to Sipcot Police Station. In that case, the Investigation Officer has filed the Final Report and it has been tried by the II Additional District and Sessions Judge, Tirunelveli. The present occurrence said to have taken place, when the above said deceased Sivakumar along with the defacto complainant and others were about to attend the trial proceedings.



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5. The accused No.5, 7,11, 18, 10 filed the bail application before this Court and that came to be dismissed on 09.11.2021. Similarly, the other bail applications were filed by the co-accused came to be dismissed on various dates by this Court. The appellant has moved the bail application before the Special Court and that came to be dismissed by order dated 28.11.2022. Challenging the same, this appeal has been preferred.

6. The counsel for the defacto complainant and the appellant heard. The learned Additional Public Prosecutor heard and he has submitted the status report.

7. As narrated in the earlier orders, background facts are required for deciding the bail application. Originally, one Athipalam was murdered as retaliation of another murder took place in 2016. The deceased was one Kannan alleged to have murdered the above said Athipalam. The deceased was returning from the District Court, Thoothukudi after attending the hearing, the accused executed the murder on 21.08.2019 at about 9.30.m., in the public place. This is the third murder in sequence and that too retaliation.



9. Per contra, the learned counsel for the defacto complainant would submit that witness protection was ordered by this Bench. This petitioner has involved in three previous cases and similarly, other accused are also having previous bad antecedents. In spite of specific direction issued by this Court on several occasions, the trial could not be commenced, since about 15 petitions have been filed by the petitioner, stalling entire trial process.

10. The learned Additional Public Prosecutor would submit that the earlier order has been passed by this Court may be taken into account and



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inspite of repeated direction, the trial could not be completed because of one or other reasons. Now the accused No.19 is absconding and the warrant is also been issued. According to him, this is not fittest case to exercise the discretion.

11. Now coming back to the Final Report, it has been stated that on 21.08.2019, this accused and along with other accused were waiting infront of one Muthukumar's office, watching the movements of the deceased in a bike. Now the bike referred by the petitioner is that it does not belong to him. Whatever it may be whether the said bike belongs to him or not is the matter for consideration of the trial Court. Specific allegation to the effect that he was also present and watching the movements of the accused.

12. The learned counsel for the petitioner would submit that simply because the previous cases are pending against the petitioner, he cannot be denied bail. The alleged specific over tact must be taken into account. For that purpose, he relied upon the judgment of ***Honourable Supreme Court in Prabhakar Tewari Vs. State of U.P.,and another in Crl.A No.353 of 2020.***



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13. No doubt that very bad antecedent cannot be the sole ground for rejecting the bail. But it has been held uniformly that it is also one of the ground, which must be taken into account. Even if we take the argument of the appellant from this angle, as I mentioned earlier, he was also present, watching movements of the deceased for facilitating the murder, though it failed on the previous occasions. I mentioned earlier, 21.08.2019 the date on which, the availability of the petitioner was also noticed.

14. Finally, I find no reason to enlarge the petitioner on bail. If he is released on bail, there is every likelihood of hampering the trial process and tampering the witness. So, this is not a fittest case to exercise the discretionary power. Accordingly, this appeal is dismissed.

15. In the result, this appeal deserves dismissed and accordingly dismissed.

14.02.2023

NCC : Yes/No
Index : Yes/No
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G.ILANGO VAN,J.

Indu

To

- 1.The Deputy Superintendent of Police,
Thoothukudi South Police Station,
Thoothukudi.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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