



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.03.2024

CORAM

THE HON'BLE **MR.JUSTICE M.NIRMAL KUMAR**

Crl.A.Nos. 1639 of 2023 & 35, 37, 38 & 169 of 2024

1. Munusamy

2.Santhakumar @ Samu

...Appellants

Vs.

1.The Assistance Commissioner of Police

O/o. Assistance Commissioner Poonamallee,
Thiruvallur District.

2.State

Represented by
The Inspector of Police,
Nazarethpet Police Station (Avadi City)
Thiruvallur District.
(Crime No.77 of 2023)

3.S.Vijayalakshmi

...Respondents

PRAYER:

Criminal Appeal filed under Section 14(A)(2) of SC/SCT Act 1989
to set aside the order passed by the Court of the Principal District and
Sessions Judge at, Thiruvallur, Thiruvallur District, in Crl.MP No.6261 of
2023 dated 22.12.2023 and enlarge the appellant on bail pending trial in



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SC No.165 of 2023 on the file of the Court of the Principal District and Sessions Judge at Thiruvallur, Thiruvallur District connected with Crime No.77 of 2023 on the file of the respondent police.

For Appellants : Mr.R.Sasikumar in all cases

For Respondents : Mr.S.Rajkumar
Additional Public Prosecutor
for R1 and R2 in all cases
Mr.V.Arunachalam
for R3 in all cases

COMMON JUDGMENT

This Criminal Appeal has been filed to set aside the order in CrI.MP Nos.6261, 6267, 6260, 5399 and 6260 of 2023 dated 22.12.2023 passed by the Court of the Principal District and Sessions Judge at, Thiruvallur, Thiruvallur District, and enlarge the appellants on bail pending trial in SC No.165 of 2023 on the file of the Court of the Principal District and Sessions Judge at Thiruvallur, Thiruvallur District connected with Crime No.77 of 2023 on the file of the respondent police.

2.This Court, on 07.03.2024, had passed the following order:

The Accused 8 and 11 in S.C.No.165 of



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2023 are the appellants in Crl.A.No.35 of 2024. The Accused 2 and 4 in S.C.No.165 of 2023 are the appellants in Crl.A.No.37 of 2024. The Accused 12, 17 and 18 in S.C.No.165 of 2023 are the appellants in Crl.A.No.38 of 2024. The Accused 1 and 9 in S.C.No.165 of 2023 are the appellants in Crl.A.No.169 of 2024 and Accused No.22 in S.C.No.165 of 2023 is the appellant in Crl.A.No.1639 of 2023. These appellants have filed their bail applications before this Court.

2.The contention of the learned counsel for appellants is that the assailants and other accused, who are similarly placed to the appellants in this case have been granted bail by the Principal Sessions Judge, Tiruvallur in C.M.P.No.3562 of 2023 for A3/Dinesh, A5/Guna, A6/Anandan on 10.08.2023. In that the third respondent/de-facto complainant had appeared and made her objection and thereafter only bail was granted. Similarly, A13/Purushothaman @ Settu, A14/Reegan, A15/Selvaganapathi and A20/Prabhu were granted bail by this Court in Crl.O.P.No.19925 of 2023 on 07.09.2023. Similarly, A21/Veera @ Veerabathran was granted bail by this Court in



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Crl.O.P.No.20546 of 2023 on 03.10.2023. A10/Rajkumar and A16/Prasanth were granted bail by this Court in Crl.O.P.No.28858 of 2023 and A7/Raghuman was granted bail by this Court in Crl.O.P.No.495 of 2024 on 12.01.2024.

3.The case projected against the petitioners/accused is that when the deceased in this case was travelling in his car near the Nazarethpet junction, two cars followed the deceased. One car intercepted and dashed against the car of the deceased and thereafter thrown the country bomb over the deceased and the deceased got down from the car and ran away for few meters. He was chased and attacked by the assailants all over the body and done to death. As regards A1, there was some business rivalry in the scrap business and hence, he is said to have planned, executed murder in connivance with the other accused. The other accused, who are before this Court, are only car driver of one of the Xylo car and some had participated in preparation of the country bomb and some had given confidence to the accused and they have got no other specific overt act with regard to the attack of the deceased.



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They have been in custody for more than 10 months. Now investigation completed, charge sheet filed in S.C.No.165 of 2023, which is pending trial. For the purpose of effectively defending the case they prayed that bail to be granted. A8, A17 and A18 have no specific overt act. With regard to A7, it is stated that he ran over the deceased. A2 along with A12 and A19 prepared the country bomb and A4 is said to have thrown the country bomb on the deceased and A11 thrown country bomb on the car. A12 is the person, who had driven the Xylo car, intercepted and dashed against the car of the deceased and pulled out the deceased from the car.

4.The learned counsel for the de-facto complainant submitted that in the bail applications before the Sessions Court, except for A3, A5 and A6 notice not given to de-facto complainant for other accused bail petitions. Neither the appellants/accused disclosed about invoking of SC/ST Act in this case by alteration report though filed as early as on 21.07.2023 nor the learned Additional Public Prosecutor informed the Court about the same. The learned Additional Public



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Prosecutor informed that investigation completed and charge sheet filed in S.C.No.165 of 2023 dated 26.07.2023, for the reasons best known, the complete particulars not informed to the Court and for that reason only this Court granted bail. Further, in this case, charge sheet filed on 26.07.2023. But till date copies to all accused could not be furnished, which would show the power wielded by the accused, though in prison. As per Section 7 of the SC/ST Act, the trial to be completed preferably within a period of two months but in this case it is almost 6 months, summons is yet to be served to the accused 3, 5 and 6, who were granted bail by this Court. No steps taken by the investigating officer in this case to serve the summons or any other effective steps to ensure presence of all accused and to complete the trial without delay as envisaged under the SC/ST Act.

5.The learned Additional Public Prosecutor filed his counter and giving overt act of each of the accused and his status report confirm that on 21.07.2023 alteration report filed invoking Section 147, 148, 341, 302, 120(B), 149 of IPC and



Section 4(a) and 5 of Explosive Substances Act, 1908 and 3(2)(v) of SC/ST (POA) Act, 1989. Further it is also found in the status report that charge sheet filed, taken on file as S.C.No.165 of 2023 on 26.07.2023 and the case was posted to 05.02.2024 for appearance of A3, A5 and A6 and the case now stands posted to 18.03.2024.

6.From the order copies produced in Crl.O.P.Nos.20546, 19925 and 28858 of 2023 and 495 of 2024, it is seen that all the orders passed after the alteration report filed on 21.07.2023 invoking SC/ST Act. The case on the face of it appears to be an organised brutal murder in a public place, the learned Additional Public Prosecutor is directed to produce the instruction sheets of the respondent police and who is the officer concerned and what is the instruction given, whether complete particulars of the case informed to the Public Prosecutor, it is to be noted that in two of the orders, learned Additional Public Prosecutor submitted that investigation completed and charge sheet filed, which includes SC/ST Act. The learned Additional Public Prosecutor is directed to give instructions to the concerned



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*investigating officer to be present before this Court
on 12.03.2024.*

7.Post on 12.03.2024.

3. In continuation and conjunction to the earlier order passed by this Court on 07.03.2024, a common counter affidavit has been filed by the third respondent. On a perusal of the co-accused bail applications, it is seen that in all the applications, the prosecution had disclosed the fact of inclusion of SC/ST Act, alternation of charge on 21.07.2023, and the filing of the charge sheet on 25.07.2023.

4. In view of the same, the contention of the third respondent that the prosecution had suppressed the fact before this Court and the prosecution has not put forth the real facts before the court when the co-accused bail was considered may not be proper. No doubt, the notice under Section 15 A of the SC/ST Act have not been ordered. The victim was not heard in any of the earlier bail applications, which was filed in CrI OP Nos.495 of 2024, 28858 of 2023, 19925 of 2023, 28858 of 2023,



and 20546 of 2023. It is for the third respondent to file appropriate petition to address her grievance in this regard. It is seen that they are totally 22 accused.

5. The third respondent has filed a common counter affidavit, wherein it is stated as under:

4. It is respectfully submit that on 27.04.2023 the third respondent husband namely Mr.PPGD Shankar is going to Chennai to party office by his maroon color KIA car bearing Reg.No.TN 03 AB 1186, on the same, the 3rd respondent and her relative Arunbabu went to meet one Ponmurugan at nazarthpet with deceased car, thereafter the deceased return to his home and try to pick up the said person at nazarthpet bus stop, at time appellants and along with person were came by two car in the scene of occurrence and blocked the deceased car thrown country bomb thrice in deceased car, for which the deceased came out of the car and run towards varatharajapuram village and also the 3rd respondent and his relative ran behind the deceased, but the deceased was blocked by the appellants herein at the entrance of the street and murder the deceased using the knives and other dangerous weapons by chopping the deceased head and face with ulterior business motive, hence the 3rd respondent gave a complaint before the 2nd respondent on 28.04.2023 alleged under Sections 147, 148, 341, 302 of IPC r/w 5 of Explosive substance Act @ under section 147,148, 341, 302 of IPC R/W 5 of Explosive substance Act



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and 3(2) (V) of SC/ST Act on 21.07.2023.

4. It is respectfully submit that the deceased Mr.PPGD Shankar is panchayat president in Valarpuram Village and also state treasurer of national political party, who is running scrap business in an around sriperumbudur. The appelleants were business enmity with my husband, pre planed and well preparation for committing the offence with ulterior motive thereafter 3rd respondent husband was murder with help of country bombs and other endangers .

5. It is respectfully submit that the appellants are habituate offender and multiple case was pending before the various police station in an around Thiruvallur district.

6. It is respectfully submits that in the circumstances 3rd respondent lodged FIR against the appellant/accused. It is respectfully further submits that the averments made in the FIR are true and correct and same may be treated as part and parcel of the present counter.

7. It is respectfully submit that if this Hon'ble Court enlarges bail to appellant to escape from the clutches of law and also to drage on the trial proceedings further more they will tamper the entire witness and corroborate evidence of the case during the trial.

6. Considering the submissions and perusal of the material, it is seen that this Court had already granted bail to the accused who have specific overtact on the deceased and majority of the accused except the appellants. Now the investigation completed, charge sheet filed and the



case is pending trial.

7. In view of the above, this court is inclined to grant bail to the appellants subject to the following conditions:

(i)The appellants shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each, with two sureties each for a like sum to the satisfaction of the learned Principal District and Sessions Judge, Thiruvallur, Thiruvallur District.

(ii)the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Judge may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(iii)the appellants shall appear before the second respondent Police every Monday at 10.30 a.m. except on the day of their appearance before the Courts.

(iv)The appellants shall not give any inconvenience or trouble knowingly or unknowingly to the 3rd respondent, failing



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which, the bail shall be cancelled without any further reference.

(v)the appellants shall not commit any offences of similar nature;

(vi)the appellants shall not abscond either during investigation or trial;

(vii)the appellants shall not tamper with evidence or witness either during investigation or trial;

(viii)on breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the appellants in accordance with law as if the conditions have been imposed and the appellants released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]***;

(ix)if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

8. In view of the above, the impugned orders in CrI.MP Nos.6261, 6267, 6260, 5399 and 6260 of 2023 dated 22.12.2023, passed by the



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Principal District and Sessions Judge at Thiruvallur, Thiruvallur District
are set aside and the Criminal Appeals are, accordingly, allowed.

25.03.2024

mrn

Note: Issue order copy by 25.03.2024

To

1. The Assistance Commissioner of Police
Assistance Commissioner, Poonamallee,
Thiruvallur District.
2. The Inspector of Police,
Nazarethpet Police Station (Avadi City)
Thiruvallur District.
3. The Principal District and Sessions Judge at Thiruvallur,
Thiruvallur District
4. The Superintendent,
Central Prison, Puzhal,
Chennai.
5. The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J

(mrn)

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