



**Crl.A(MD)Nos.112, 185, 188 & 189 of 2024 and
Crl.O.P.(MD).No.16237 of 2023**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.09.2024

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

**Crl.A(MD)Nos.112, 185, 188 & 189 of 2024
and Crl.O.P.(MD).No.16237 of 2023**

Cause Title made in Crl.A.(MD).No.112 of 2024

Malaikolunthu ... Appellant/Accused No.2

Vs.

1.State through

The Deputy Superintendent of Police,
Melur Sub Division,
Madurai District.

2.The Inspector of Police,
Melavalavu Police Station,
Madurai District.

(Crime No.39 of 2020) ... Respondents 1 & 2/Complainant

3.Lakshmanan ... Respondent No.3/Defacto complainant

Prayer : This Appeal is filed under Section 14A(2) of SC & ST (POA) Amendment Act, 2015) to call for the records relating to the impugned order passed in Crl.M.P.No.81 of 2024 dated 22.01.2024 on the file of the III Additional District and Sessions Judge (PCR) Madurai District and set aside the same as illegal and arbitrary and enlarge the appellant/accused No.3 in Crime No.39 of 2020 on the file of the respondent on bail.



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For Appellant : Mr.V.Karthir Velu, Senior counsel for
Mr.K.Jeyamohan

For Respondents : Mr.M.Sakthi Kumar for R1 & R2
Government Advocate (Crl. Side)
Mr.K.Suyumbu Linga Bharathi for
Mr.E.R.Bharathi Kannan for R3

Cause Title made in Crl.A.(MD).No.185 of 2024

Ajithbalan ... Appellant/Accused No.11

Vs.

1.State through

The Deputy Superintendent of Police,
Melur Sub Division,
Madurai District.

2.The Inspector of Police,
Melavalavu Police Station,
Madurai District.

(Crime No.39 of 2020) ... Respondents 1 & 2/Complainant

3.Lakshmanan ... Respondent No.3/Defacto complainant

Prayer : This Appeal is filed under Section 14A(2) of SC & ST (POA) Amendment Act, 2015) to call for the records relating to the impugned order passed in Crl.M.P.No.3620 of 2023 dated 29.12.2023 on the file of the III Additional District and Sessions Judge (PCR) Madurai District and set aside the same as illegal and arbitrary and enlarge the appellant on bail in Crime No.39 of 2020 on the file of the respondent on bail.

For Appellant : Mr.R.Gandhi, Senior counsel for
Ms.A.Banumathy



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For Respondents : Mr.M.Sakthi Kumar for R1 & R2
Government Advocate (Crl. Side)
Mr.K.Suyumbu Linga Bharathi for
Mr.E.R.Bharathi Kannan for R3

Cause Title made in Crl.A.(MD).No.188 of 2024

1.Karmegam
2.Malaisamy ... Appellant/Accused No.2 & 4

Vs.

1.State through
The Deputy Superintendent of Police,
Melur Sub Division,
Madurai District.
2.The Inspector of Police,
Melavalavu Police Station,
Madurai District.
(Crime No.39 of 2020) ... Respondents 1 & 2/Complainant
3.Lakshmanan ... Respondent No.3/Defacto complainant

Prayer : This Appeal is filed under Section 14A(2) of SC & ST (POA) Amendment Act, 2015) to call for the records relating to the impugned order passed in Crl.M.P.No.268 of 2024 dated 15.02.2024 on the file of the III Additional District and Sessions Judge (PCR) Madurai District and set aside the same as illegal and arbitrary and enlarge the appellants/accused Nos.2 and 4 on bail in Crime No.39 of 2020 on the file of the respondent on bail.

For Appellant : Mr.V.Karthir Velu, Senior counsel for
Mr.K.Jeyamohan



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**Crl.A(MD)Nos.112, 185, 188 & 189 of 2024 and
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For Respondents : Mr.M.Sakthi Kumar for R1 & R2
Government Advocate (Crl. Side)
Mr.K.Suyumbu Linga Bharathi for
Mr.E.R.Bharathi Kannan for R3

Cause Title made in Crl.A.(MD).No.189 of 2024

K.Gopalakrishnan ... Appellant/Accused No.1

Vs.

1.State through

The Deputy Superintendent of Police,
Melur Sub Division,
Madurai District.

2.The Inspector of Police,
Melavalavu Police Station,
Madurai District.

(Crime No.39 of 2020) ... Respondents 1 & 2/Complainant

3.Lakshmanan ... Respondent No.3/Defacto complainant

4.Jeya Gowsalya ... 4th Respondent

*(4th respondent is impleaded as per order of the Court dated 25.04.2024 in
Crl.M.P.(MD).No.4352 of 2024 in Crl.A.(MD).No.189 of 2024.)*

Prayer : This Appeal is filed under Section 14A(2) of SC & ST (POA) Amendment Act, 2015) to call for the records relating to the impugned order passed in Crl.M.P.No.268 of 2024 dated 15.02.2024 on the file of the III Additional District and Sessions Judge (PCR) Madurai District and set aside the same as illegal and arbitrary and enlarge the appellant/Accused No.1, on bail in Crime No.39 of 2020 on the file of the respondent on bail.



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For Appellant : Mr.V.Karthir Velu, Senior counsel for
Mr.K.Jeyamohan

For Respondents : Mr.M.Sakthi Kumar for R1 & R2
Government Advocate (Crl. Side)
Mr.K.Suyumbu Linga Bharathi for
Mr.E.R.Bharathi Kannan for R3
Mr.Henri Tiphagne for R4

Cause Title made in Crl.O.P.(MD).No.16237 of 2023

Jeya Gowsalya ... Petitioner/Defacto Complainant

Vs.

1.The State through the
Inspector of Police,
Melavalavu Police Station,
Madurai District.
(Crime No.202 of 2022)

... Respondent No.1/Complainant

2.M.Gopalakrishnan

3.M.Karmegam

4.R.Ajith Balan ... Respondent Nos.2 to 4/Accused Nos.1, 2 & 4

Prayer : This criminal original petition filed under Section 439(2) of Cr.P.C. to cancel the bail granted to the respondent Nos.2 to 4 in Crl.M.P.No. 2696/2023, dated 24.04.2023, by the learned Principal Sessions Judge, Madurai, in connection with the Crime No.202 of 2022 on the file of the first respondent police.

For Petitioner : Mr.K.Suyumbu Linga Bharathi for
Mr.E.R.Bharathi Kannan



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***Crl.A(MD)Nos.112, 185, 188 & 189 of 2024 and
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For Respondents : Mr.M.Sakthi Kumar for R1
Government Advocate (Crl. Side)
Mr.Niranjan S.Kumar for R2, R3 & R4

COMMON JUDGMENT

These appeals are filed against the dismissal of the bail applications filed by the appellant/accused persons in Crime No.39 of 2020 and the criminal original petition has been filed to cancel the bail already granted against the respondents 2 to 4/accused persons in Crime No.202 of 2022.

2.In Crl.A.(MD).No.112 of 2024, the appellant Malai Kolunthu is the third accused. In Crl.A.(MD).No.185 of 2024, the appellant Ajithbalan, is the 11th accused. In Crl.A.(MD).No.188 of 2024, the appellants Karmegam and Malaichamy are the accused Nos.2 and 4. In Crl.A.(MD).No.189 of 2024, the appellant Gopalakrishnan is the first accused and one Jeya Gowsalya was impleaded as fourth respondent, apart from the original defacto complainant in all the cases. All the four appeals are pertaining to Crime No.39 of 2020 on the file of the second respondent namely the Inspector of Police, Melavalavu Police Station. Now it is pending before the III Additional District and Sessions Judge, Madurai, in Spl.S.C.No.25 of 2021 for trial.



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3.Since the facts are one and the same and the appellants are co-accused, all the matters were heard together and the following common judgment is passed.

4.The facts in brief:

The defacto complainant namely Lakshmanan, who is the third respondent in all the appeals lodged a complaint on 24.02.2020 stating that his wife namely Anitha is having ancestral properties in Sambiranipatti Village, A.Vallalapatti, Melur Taluk. They are cultivating their lands. The first accused Gopalakrishnan and his family members created trouble. So suit was filed. It was also decreed in their favour. They made arrangements to measure the property one year prior to the occurrence. Over that the Gopalakrishnan and his associates and family members were enimical. Adjacent to their land one Suresh is owning property. To him also the first accused Gopalakrishnan made trouble. On 24.02.2020, after measuring the property, Suresh and his father Dharmaraj were planting boundary stones. At that time, the defacto complainant was present in the place of occurrence, since Suresh was his friend.



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5.At about 5.30 p.m., the first accused Gopalakrishnan and his brother Karmegam, Malaikolunthu, Malaichamy, Veeranan and his relatives came to that place with deadly weapons, abused them in filthy language, picked up quarrel Gopalakrishnan assaulted him with stick, Malaikolunthu tried to cause assault with aruval. Suresh prevented that assault. The cut fell on the right hand of Suresh. Dharmaraj tried to stop. He was also assaulted by Malaichamy, Karmegam and Veeranan with sticks and hands. He videographed the entire occurrence. On seeing the same, the accused abused him in filthy language by calling upon him by his caste name. Again Gopalakrishnan assaulted him with stick. Malaikolunthu assaulted him with aruval on his neck region. The others pushed him down, caused injuries by stamping. When he tried to escape from that place, the Gopalakrishnan assaulted him with aruval. He suffered injuries on the back side of the head. He fell down unconscious. The accused stolen away the cell phones, gold chain worth about 5 sovereigns. He was admitted in the Government Hospital, Melur and later referred to and got admitted in the Meenakshi Mission Hospital, Madurai. In the hospital, he gave statement before the Police officials. Upon which case in Crime No.39 of 2020 was registered for the offences punishable under Sections 147, 148, 447, 341, 294(b), 323, 324, 307 and 379 of IPC and Section 3(2)(va) of The Scheduled Caste and the



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Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

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6.After completing the investigation, final report was filed before the Special Court and the same was taken cognizance in Spl.S.C.No.25 of 2021. Now it is pending before the Special Court for trial. All the appellants were granted bail by the special Court on 09.09.2020.

7.While they were on bail, Jeya Gowsalya, who is the fourth respondent in Crl.A.(MD).No.189 of 2024, lodged a complaint with the same police station, stating that her husband Suresh and his father-in-law are witnesses in Spl.S.C.No.25 of 2021. On 18.12.2022, her husband namely Suresh went to that land in a Car bearing Registration No.TN 57 BU 3745. She was informed that at about 6.30 p.m., due to the previous enmity, the accused Gopalakrishnan, the Karmegam, Barath, Ajithbalan, Ramar and his wife Pandiselvi, Malaichamy, Thirumalai, Alagammal @ Selvi, murdered her husband. That was informed to her at about 07.00 p.m., by one Prakash. They immediately rushed to the place and found her husband dead with serious injuries. On enquiry, she was informed that only the above said accused persons caused the murder. On the basis of the complaint given by her a case in Crime No.202 of 2022 was registered for the offences punishable under



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Sections 147, 148, 341, 302 and 506(ii) of IPC.

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8.The defacto complainant in this matter namely Lakshmanan filed an application to cancel the bail granted in this crime number before this Court in CrI.O.P.(MD).No.10559 of 2022 and batch and bail was cancelled by the order dated 31.03.2022, in view of the further occurrence in Crime No. 202 of 2022.

9.Against the cancellation order accused moved SLP before the Honourable Supreme Court and that was disposed of with direction to the accused to file bail application before the Trial court by the order dated 23.06.2023.

10.In furtherance of the above said direction or liberty, bail applications were moved by all the appellants before the Special Court. And all those applications were dismissed. Against which, these separate appeals are preferred.

11.Crl.O.P.(MD).No.16237 of 2023:

The petitioner is the defacto complainant in Crime No.202 of 2022.



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The respondents are accused 1, 2 and 4 in the crime. The defacto complainant namely the petitioner herein lodged a complaint with the first respondent police stating that the deceased was doing a business. She purchased a farm land at Sambiranipatti Village, Melur Taluk and cultivating coconut trees. The first accused namely Gopalakrishnan is also owning coconut garden adjacent to the land. Because of the land purchase, trouble was crated by the first accused and his relatives. Crime No.39 of 2020 was registered against the first accused and others for the offences punishable under Sections 147, 148, 447, 341, 294(b), 323, 324, 307 and 379 of IPC and Section 3(2)(va) of The Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, on the basis of the complaint given by the Lakshmanan. The first accused and others warned the deceased not to give evidence before the trial court. But, he refused. So the accused planned to murder her husband and executed the same on 18.12.2022 as detailed in the FIR.

12.After completing the investigation final report was filed before the learned Judicial Magistrate, Melur, in P.R.C.No.17 of 2023. The respondents 2 to 4 moved bail application before the Principal District Judge, Madurai in Crl.M.P.No.2629 of 2023. That was allowed on 24.04.2023.



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13.At the time of passing the order, vital aspects were not brought to the notice of the Court. There is no mention with regard to the previous antecedents of the accused. The accused are habitual offenders. By suppression of facts bail has been obtained from the Principal District Judge, Madurai. The cancellation of bail order in Crime No.30 of 2020 was not brought to the notice of the Court. The order was passed on 31.03.2023. On this ground this criminal original petition is filed seeking order to cancel the bail granted to the respondents 2 to 4 in Crime No.202 of 2022.

14.Heard both sides.

15.Points for consideration in these appeals:

- (I) Whether the principle 'Bail is the Rule and Jail is an Exception' can be made extended to the people like the appellants, who indulged in disappearance of evidence by wiping out one of the injured.
- (II) Whether the appellants polluted the Process of Justice?
- (III) Is it not the duty of the person to ensure that his personal liberty should not endanger the life of other?



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16.For the points to be decided Mr.Kathirvelu, learned Senior Counsel and Mr.R.Gandhi, learned Senior Counsel, the learned Government Advocate (Crl. Side), Mr. Mr.Henri Tiphagne and Mr.Bharathi Kannan, were heard in depth. The appellants would submit that the appellant in Crl.A. (MD).No.112 of 2024 is not an accused in the subsequent case registered under Section 302 IPC. It is further submitted that the first accused namely Gopalakrishnan is a Social Spirited person and he filed several writ petitions and Public Interest Litigations for removal of encroachment. Because of that only the case has been foisted.

17.Apart from that it is also submitted that it is a case in counter, in which the first accused namely Gopalakrishnan has also suffered injuries on his right hand. The complaint given by them was not taken into account by police and so he has filed complaint under section 156(3) Cr.P.C. before the Magistrate Court. So according to him, unless that matter is ripe for trial, the present trial cannot be commenced.

18.Mr.Gandhi, learned Senior counsel would submit that it is not a communal issue as projected by the prosecution. It is purely civil issue between these two people. He also referring to the various cases filed by the



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Gopalakrishnan mentioned in the typed set of papers. It is also further submitted by Mr.Gandhi, that whatever condition that may be imposed by this Court, it will be complied by the appellant, by that their presence can be ensured for trial, since prolonged incarceration is depriving their personal liberty.

19.Per contra, the defacto complainant's counsel as well as the learned counsel for the Jeya Gowsalya, submitted that there is specific provision in the Special Act that trial must be completed within three months. In spite of repeated orders passed in various courts the accused are not co-operating with the trial Court. When the matter was called on 12.08.2024, the learned counsel appearing for the accused withdrew their vakalath. So this shows that they are not interested in the matter to be tried to its logical conclusion. Four Courts have refused the bail to the accused consecutively. Unless the security of the witnesses or victim as the case are protected fair justice will be an illusion.

20. Mr.Henri Tiphagne would submit that the witness protection must be the paramount consideration of this Court. When one of the witnesses is murdered, the appellants are not entitled for any consideration for bail.



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They are misusing the liberty.

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21.Mr.Bharathi Kannan, who is appearing for the defacto complainant would submit that there are three injured in the present subject. Pending trial process one of the witness in the subject matter was murdered. The first accused is a history sheeted person, involved in several cases.

22.The learned Additional Public Prosecutor would submit that the accused persons are interested in dragging the matter. When the matter was called for commencing trial, they produced irrelevant records before the trial Court for delaying the trial process; they went to the extent of pressurizing the trial Judge from commencing trial.

23.In reply to the above said arguments advanced by the learned Additional Public Prosecutor and defacto complainant and others, it is submitted by the learned Senior Counsels that for the offence under Section 307 IPC, they cannot be kept in jail indefinitely. Moreover, the appellant in Crl.A.(MD).No.185 of 2024, even as per the case of prosecution only stick was used by him. Apart from that no specific overt act was attributed.



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24.The intention on the part of the defacto complainant is very much apparent on the face of the record; The entire family members of the first accused were implicated in both the matters. That is why this court in Crl.O.P.(MD).No.17148 of 2021 quashed the charges against the accused Nos.2 to 10, A12 and A13. Even in the murder case namely the subsequent case, all the family members of the first accused are implicated. One of the accused as mentioned above admitted in the government hospital and now he is also suffering injuries in his right hand.

25.Finally both of them would submit that bail is a Rule and Jail is an exception; this is the basic principle governing the field of bail jurisdiction; That must be followed by this Court.

26.Now let us take the last leg of the arguments of the appellants.

Whether the principle 'Bail is the Rule and Jail is an Exception' can be made extended to the people like the appellants, who indulged in disappearance of evidence by wiping out one of the injured. This is the short point arises for consideration as pointed out on the opening paragraph of the discussion. Only on that ground earlier bail order was cancelled by this Court. Later regular bail was also refused by the trial court.



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27. Whether false accusation has been made against all the family members of the first accused, whether the first accused is a social spirited person and issue between the poor people and the wealthy, who bend upon encroaching the properties, are all matters which are alien to the discussion now. Those matters can be taken up by the trial court at the appropriate time. So I am not discussing on that issue and recording any opinion also. We will carry on only with the merits of the matter.

28. As stated above, the trial process could not be commenced, in spite of repeated direction issued by this court. According to both the parties contra reasons are mentioned. With regard to the case and counter case issue, this is the first time that is argued before the Court. If it is so, proper steps might be taken by the appellants even at the initial stage itself. When their bail is cancelled no plea was raised. When they are refused bail by the trial court, no plea was raised. But for the first time as mentioned above such a plea is raised. Perusal of records shows that first accused namely Gopalakrishnan and some others were also involved in Crime No.288 of 2016 on the file of the respondent police on the basis of the complaint lodged by one Pasumponmuthuramalingam. In that case also a plea was taken by



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Gopalakrishnan that it is a case in counter and his complaint was not properly investigated. He filed various Crl.O.P.(MD).Nos.2259, 2328 and 6150 of 2017. But, I am not expressing any opinion on that whether any similar *modus operandi* is employed by Gopalakrishnan in stalling the trial process, as mentioned above it is for the trial Court to take into account at the relevant point of time.

29.Now as mentioned above, the short point is whether the appellants have by their own conduct disqualified themselves from claiming discretionary relief, in view of the subsequent murder case in Crime No.202 of 2022. Now in that matter also final report is filed and trial is going to be commenced.

30.Now coming back to the opening paragraph of the discussion as to the principle of 'Bail is the Rule and Jail is an Exception', is elaborated further by the Honourable Justice Krishna Iyer, in the Celebrated Judgment in ***Gudikanti Narasimhulu and others Vs. The Public Prosecutor, High Court of Andhra Pradesh*** reported in (1978) 1 SCC 240. The following portion is relevant for our discussion.

“7.It is thus obvious that the nature of the charge is the



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vital factor and the nature of the evidence also is pertinent. The punishment to which the party may be liable. If convicted or conviction is confirmed, also bears upon the issue.

8. Another relevant factor is as to whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being.

9. Thus the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record – particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further about the criminal record of a defendant, is therefore not an exercise in irrelevance.”

31. What is mentioned by the Honourable Justice Krishna Iyer in the above said judgment is that if the parties are indulged in polluting the process



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of justice, they are not entitled for any consideration at all. Here as mentioned above, they wiped out Suresh, who is the injured in the subject matter by committing gruesome murder. Mr.Henri Tiphagne, who is appearing for fourth respondent is also on the apprehension that her life may also be in danger. There is no guarantee that these people will not indulge in another crime. That is why he submitted that what he wants the protection from these people and logical conclusion of the trial process. Mr.Barathi Kannan, who is the counsel appearing for the defacto complainant also relied upon the Judgment of the Honourable Supreme Court in the case of ***Mahendra Chawla and Others Vs. Union of India and others*** made in ***W.P. (Criminal).No.156 of 2016***, which is on the very same point of witness protection scheme.

32.From the discussion made above, I am of the considered view that if the appellants are released on bail, there is no chance for fair justice; There is no chance for the trial court to take up the trial process and complete the same within the time stipulated. So it is not the fittest case to exercise the discretionary power by adopting the principle 'Bail is a Rule and Jail is an Exception'. So the order passed by the trial Court requires no interference, even though one of the appellants namely Malaikolunthu is not the accused in



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Crime No.202 of 2022. All the appeals deserves to be dismissed.

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33.Crl.O.P.(MD)No.16237 of 2023:

Consideration for cancellation of bail is a serious issue, which must be properly appreciated. The discussion made with regard to the conduct of the respondents 2 to 4 the principle Bail is a Rule and Jail is an exception cannot be extended to the people like the respondents 2 to 4, who have misused the liberty granted. Side by side, this case also been discussed namely Crime No.202 of 2022.

34.Now we will see the date and events in Crime No.39 of 2020. The bail that was granted to the accused was cancelled by this Court in Crl.O.P.(MD).No.10559 of 2020 and batch, dated 31.03.2020 for having caused the death of Suresh, While the respondents 2 to 4 were on bail. The date of order of the Principal District Judge, Madurai, in this matter is 24.04.2023. By the time, the order passed by this Court would have been brought to the notice of the first respondent herein. But, reading of the order does not indicate that those order passed by this Court were brought to the notice of the Principal District Judge, by the police. It has been simply stated



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before the Court that a case in Crime No.39 of 2020 is also pending. It was informed that the co-accused were enlarged on bail by the High Court and by the Principal District Judge, Madurai and investigation is completed and final report filed taken cognizance in P.R.C.No.17 of 2020. Noting that the respondents 2 to 4 are in custody for more than 106/110 days, bail was granted as mentioned above. But, unfortunately, the bail cancellation order was not brought to the notice of the Principal District Judge.

35. There is no guarantee as mentioned above that the respondents 2 to 4 will not indulge in similar crimes while on the bail, Since their past conduct involving themselves in this crime, does indicate.

36. Moreover, relevant consideration as to the gravity of the offences and the chance of committing crimes while on bail were not considered by the Principal District Judge, Madurai, in the light of the conduct of the accused. So I am of the considered view that the bail granted by the Principal District Judge, Madurai to the respondents 2 to 4 in Crime No.202 of 2022 is liable to be cancelled and accordingly, cancelled.



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37.In the result, these criminal appeals stand dismissed. The Crl.O.P.(MD).No.16237 of 2023 stands allowed and the bail granted to the respondents 2 to 4/Accused Nos.1, 2 and 4 in Crime No.202 of 2022 stands cancelled.

06.09.2024

Index : Yes/No
Internet : Yes/No
TM

To

- 1.The Principal District Judge, Madurai.
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- 3.The Deputy Superintendent of Police,
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- 4.The Inspector of Police,
Melavalavu Police Station,
Madurai District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN,J.

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