



Crl.A.(MD)No.1026 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.12.2023

Pronounced on : 03.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.A.(MD)No.1026 of 2023

Malaikolunthu

... Appellant / Accused No.3

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)

... 1st & 2nd Respondents/Complainants

3.Lakshmanan

... 2nd Respondent/De-facto Complainant

PRAYER: Criminal Appeal filed under Section 14(A)(2) of SC/ST (Prevention of Atrocities) Act, 2015, to call for the records relating to the impugned order passed in Crl.M.P.No.3194 of 2023, dated 25.10.2023 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/Accused No.3 in Crime No.39 of 2020 on the file of the respondent on bail by allowing the appeal.



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For Appellant : Mr.V.Kathirvelu
Senior Counsel

For R1 & R2 : Mr.B.Nambi Selvan
Additional Public Prosecutor

For R3 : Mr.KR.Bharathi Kannan

JUDGMENT

The appellant has filed this Criminal Appeal to set aside the impugned order dated 25.10.2023 made in Crl.M.P.No.3194 of 2023 on the file of the III Additional District and Sessions Court (PCR), Madurai and to enlarge the appellant on bail by allowing this appeal.

2.The brief facts of the prosecution case:

The appellant is Accused No.3 in this case. There was a civil dispute between the defacto complainant and the accused persons. The Civil Court granted relief in favour of the defacto complainant and hence, on 24.02.2020 he installed boundary stones demarking his property in the presence of government officials. At that time, the appellant along with co-accused came there armed with deadly weapons and trespassed into the land of the defacto complainant and attacked the defacto complainant and his friend Suresh with



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abusive words mentioning the case of Suresh. Hence, the case was registered against the accused persons in Crime No.39 of 2020 by respondent police for the offence under Sections 147, 148, 447, 341, 294(b), 323, 324, 307, 379 of IPC r/w 3 (2) (va) of SC/ST Act. The respondent police did investigation and laid charge sheet against the accused and the same was taken on cognizance in Spl.S.C.No.25 of 2021 by the Trial Court. Already the appellant was granted bail and the same was cancelled. Again the appellant, who is Accused No.3 filed the petition in Crl.M.P.No.3194 of 2023 for bail before the Trial Court and the same was dismissed as per order dated 25.10.2023.

3. Aggrieved by the dismissal of bail petition, the appellant preferred the present Criminal Appeal before this Court.

4. Heard both sides and perused the records in this Criminal Appeal.

5. The learned counsel for the appellant has submitted that the appellant is arrayed as Accused No.3. There are 5 named and 8 unnamed accused in this case. Out of them, Accused Nos. 6 to 10, 12 & 13 filed Crl.O.P.(MD)No.17148 of 2021 and the proceedings against them were quashed by this Court. The



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appellant already filed a petition in CrI.M.P.No.445 of 2020 before the trial Court seeking bail, which was opposed by the injured Suresh, however bail was granted to him and other accused. Taking animosity, the injured Suresh was murdered by some other accused. So, the bail was cancelled by this Court in CrI.O.P.(MD)Nos.10559 of 2020 and 10561 of 2020 filed by the defacto complainant. Then the appellant filed SLP before the Hon'ble Supreme Court wherein the appellant was directed to file bail petition before the trial Court. The appellant filed CrI.M.P.No.1798 of 2023 for bail and it was dismissed on 22.06.2023 and appeal in CrI.A(MD)No.499 of 2023 filed by the appellant was also dismissed by this Court on the ground that the appellant involved in the case in which the injured was murdered. Again the appellant filed the petition in CrI.M.P.No.3194 of 2023 before the trial Court and it was dismissed on 25.10.2023 on the ground that the appellant involved in subsequent murder case and also there was danger to the life of the defacto complainant and also already bail was negatived by the Hon'ble High Court. Actually, the appellant is not involved in subsequent murder case. The Investigating Officer laid charge sheet and the same was taken on cognizance and hence, there is no question of tampering witnesses by the appellant. Therefore, the appeal may be allowed.



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6. Per contra, the learned Additional Public Prosecutor appearing for the respondents 1 and 2 strongly opposed to grant bail to the appellant stating that the appellant involved in heinous nature of crime and also the injured Suresh who opposed bail was murdered. This Court already discussed elaborately in Crl.A.(MD)No.499 of 2023 and passed order. This Court has also elaborately discussed the facts of this case directed for early disposal of main case in Spl.S.C.No.25 of 2021. Further, this Court has clearly held in Crl.O.P.(MD)No. 17148 of 2021 filed by Accused Nos.6 to 10, 12 and 13 for quash of proceedings that the named Accused Nos.1 to 5 would not take advantage of the quash order and Accused Nos.1 to 5 had to contest the trial entirely on merits and they could not place any reliance on that order. But, the appellant and other accused dragged on the proceedings of the case and even the appellant/Accused No.3 and co-accused/Accused Nos.1, 2, 4 and 11 refused to receive 207 copies which would establish from the 'B' diary of the case for the hearing 06.10.2023. There is no change in circumstances. The trial Court has correctly passed the impugned order.

7. The learned counsel for the defacto complainant submitted that since the witnesses faced life threat after grant of bail and also the injured Suresh,



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who earlier opposed bail, was murdered by the accused after enlarging bail, the bail cancellation was ordered. The appellant did not comply with the bail conditions and if the appellant is granted bail he would threaten and tamper the witnesses. The appellant's relief of bail was negated by the Hon'ble Supreme Court and this Court directed for early disposal of the main case. The interest of the witnesses is also to be taken into consideration. Hence, he strongly opposed for granting bail to the appellant. In support of his contention, the learned counsel relied on citation reported in **(2019) 14 SCC 615 (Mahender Chawla and Others Vs. Union of India and Others)**

8. On hearing both side rival arguments and on perusal of records, it is clear that the appellant in this case is arrayed as Accused No.3. The Investigating Officer laid charge sheet and the same was taken on file by the trial Court as Spl.S.C.No.25 of 2021. It is admitted that the bail already granted to the appellant was cancelled by this Court and the same was confirmed by the Hon'ble Supreme Court, however directing the appellant to approach the trial Court for bail. It is also admitted by both side that the main Spl.S.C.No.25 of 2021 has to be disposed within stipulated time. On perusal of records, this Court passed order dated 21.02.2022 in CrI.O.P.No.17148 of 2021 while



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allowing the said petition, specifically directed the Accused Nos.1 to 5 would not take advantage of quash order and also they have to contest the trial entirely on merits and the Accused Nos.1 to 5 also filed memo to that effect.

9. The injured in this case namely Suresh was murdered by the other accused after grant of bail. So, the contention of the learned Additional Public Prosecutor and the counsel for defacto complainant that there is life threat to the witness cannot be brushed aside. The contention of the appellant that as he is not involved in subsequent case, is not a valid ground for granting bail. On perusal of records, it is revealed that the appellant refused to receive the 207 Cr.P.C. copies though he was produced before the trial Court. Hence, the contention of the defcato complainant that the accused is dragging the case proceedings has some force.

10. The appellant has not disclosed any changed circumstances or any valid reason for grant of bail. The earlier bail granted to the appellant was cancelled by this Court and was confirmed by the Hon'ble Supreme Court as the witness of this case was murdered subsequently. The trial Court has correctly dismissed the bail by passing the impugned order. Considering the



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gravity of the offence and heinous nature of crime and subsequent murder of witness, this Court is not inclined to grant bail.

11. In the result, this Criminal Appeal is dismissed.

03.01.2024

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
VSD

To

- 1.The III Additional District and Sessions Judge (PCR),
Madurai District.
- 2.The Deputy Superintendent of Police,
Melur Sub Division, Madurai District.
- 3.The Inspector of Police,
Melavalavu Police Station,
Madurai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
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