



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
( Criminal Jurisdiction )  
RESERVED ON : 18/11/2021  
PRONOUNCED ON: 25/11/2021  
PRESENT

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The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). Nos.17209 and 17587 of 2021

Crl.O.P. (MD)No.17209 of 2021:

Durai Murugan

... Petitioner/Accused NO.1

Vs

The State rep.by,  
The Inspector of Police,  
Thuckalay Police Station,  
Kanyakumari District.  
Crime No.710 of 2021.

... Respondent/Complainant

V.Karthikeyan

... Petitioner/Intervenor

Crl.O.P. (MD)No.17587 of 2021:

Sattai Durai Murugan @ DuraiMurugan... Petitioner/Accused No.1

Vs

The State rep.by,  
The Inspector of Police,  
Thanjavur CCD III Police Station,  
Thanjavur District.  
Crime No.19/2021.

... Respondent/Complainant

For Petitioner

in both petitions : Mr.N.Mohideen Basha, Advocate  
for Mr.A. Mohamed Hashim, Advocate.

For Respondent

in both petitions: Mr.R.Meenakshi Sundaram,  
Additional Public Prosecutor

For Intervenor in

Crl.O.P. (MD)No.17209 of 2021

: Mr.M.Maharaja  
for Mr.P.Venkata Subramanian

PETITIONS FOR BAIL Under Sec.439 of Cr.P.C.

COMMON PRAYER :-For Bail in Crime Nos.710 and 19 of 2021 on the file  
of the Respondent Police respectively



COMMON ORDER : The Court made the following order :-

Crl.O.P.(MD)No.17209 of 2021:

The petitioner/Accused No.1 who was arrested and remanded to judicial custody on 11.10.2021 for the offences punishable under Sections 143, 153, 153A, 505(2), 506(i) and 269 I.P.C., and Section 3 of Epidemic Diseases Act, 1897 and Section 67 of Information Technology Act, in Crime No.710 of 2021 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that Naam Thamilar Party sought permission to conduct a protest to be led by their Chief Co-ordinator Chenthamilan Seeman opposite to Thuckalay Taluk Office on 10.10.2021, that the said request was rejected by the respondent police on 08.10.2021, that on 10.10.2021, the members of Naam Thamilar Party gathered in violation of COVID-19 norms and despite the rejection of permission and that the first accused had made derogatory remarks with an intention to breach the public peace and tranquility. Hence, the present case.

3. The case of the petitioner is that they have sought permission to conduct the agitation to protect the Mountains of Kanyakumari District, that the respondent police had granted permission and all the arrangements were made as instructed by the respondent police, that the respondent police suddenly have come out with a false case stating that the permission was not granted for the protest and registered a false case with political motive and that there was no single untoward incident in the protest and the agitation was held very peacefully and in democratic manner.

Crl.O.P.(MD)No.17587:

4. The petitioner/Accused No.1 who was arrested and remanded to judicial custody on 20.10.2021 for the offences punishable under Sections 153, 504, 505(1)(b), 505(2) I.P.C., and Section 67 of Information Technology Act, in Crime No.19 of 2021 on the file of the respondent police, seeks bail.

5. The case of the prosecution is that the defacto complainant, who is a member of DMK political party, had seen Ravanam You Tube channel on 09.10.2021, where he found the speech of the petitioner and another and in which the petitioner used derogatory words against Ex.Chief Minister Late Mr.Kalignar Karunanidhi and the present Chief Minister Mr.M.K.Stalin, with an intention to commit breach of public peace and tranquility. Hence, the present complaint.

6. The learned Counsel for the petitioner would submit that on the same set of allegations, a F.I.R., was registered in Cr.No.710 on the file of the Thuckalay Police Station for the alleged



offences 143, 153, 153A, 505(2), 506(i) and 269 I.P.C., and Section 3 of Epidemic Diseases Act, 1897 and another F.I.R., has been registered in Cr.No.20 of 2021, on the file of the CCD-II, Dharmapuri Town Police Station for the alleged offences under Sections 153, 504, 505(1)(b), 505(2) I.P.C., and Section 67 of Information Technology Act.

7. The learned Additional Public Prosecutor appearing for the State would submit that after due investigation in Cr.No.710 of 2021, the case was altered into Sections 143, 153, 153A, 505(2), 506(i), 269 I.P.C., r/w Section 3 of Epidemic Diseases and Section 67 of Information Technology Act. After investigation, the first accused / petitioner herein was arrested on 11.10.2021 and remanded to judicial custody and that the petitioner is having six previous cases for similar offences. He would further submit that in the other case in Cr.No.19 of 2021, the petitioner and one another have allegedly released a video in the You Tube channel called Ravana mocking the present Chief Minister of Tamil Nadu so as to lower his reputation with a malicious intention of insulting him and to provoke public peace and committed offences against public peace and harmony and also intended to create enmity between different classes. He would further submit that speeches defaming former Chief Minister Karunanithi are also made, so as to incite the public to revolt and that the petitioner had released a similar video two years ago and the Karur, Thiruppanandal and Trichy police had registered cases against him and that the petitioner is doing the same intentionally.

8. The learned Additional Public Prosecutor has listed out six cases pending against the petitioner, which are as follows:

"1. The petitioner/accused concerned in the case in K.K.Nagar PS, Trichy City Crime NO.309/2021, for the offence under Section 143, 147, 447, 294 (b) and 506(ii) I.P.C.,

2. Thirupanandhal, Thanjavur District, Crime No.559/2021, for the offence under Sections 153 (A), 504, 505(1)(b) I.P.C., and 67 I.T., Act,

3.Thakalai PS, Kanniyakumari District, Crime NO.710/2021, for the offence under Sections 143, 153, 153(A), 505 (ii), 506(i), 269 I.P.C., and 3 of Epidemic Decease Act 1987 read with 67 of I.T., Act.

4.CCPS, Dharmapurai District, Crime NO.20/2021, u/s 153, 504, 505(1)(b) 505(2) I.P.C., and 67 of IT Act,

5.Trichy Airport PS Cr.No.238/2018 u/s 147, 148, 294(b), 324, 506(ii) I.P.C.,



6. Trichy Airport PS Cr.NO.237/2018 u/s 147, 148, 149, 160, 353 I.P.C., and 3 of TNPPDL Act.”

9. Heard the learned Counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State and perused the materials placed on record.

10. An old adage says that one man's right ends, where the other man's nose begins. Justice Oliver Wendell Holmes Jr., in a more poetic way said “Your Liberty to swing your fist ends just where my nose begins”. No doubt, the freedom of speech and expression is an internationally recognized right. Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR) contemplates that right of freedom of speech can be regulated in order to honour the rights of others and in the interest of public order, public health or morals. Similarly Article 10(2) of European Convention on Human Rights provides reasonable duties and restrictions during the exercise of one's fundamental right to free speech.

11. The Constitution of India under Article 19(1)(a) provides the right to freedom of speech and expression. However, under Article 19(2), the Constitution of India also provides for the reasonable restrictions against the freedom of speech in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

12. As already pointed out, along with other exemptions notified under Article 19(2) of the Constitution of India, public order has been an exception that has been given a liberal interpretation in various judgments given by Constitutional Benches. This exception brings into its ambit all the activities that can possibly cause public disorder irrespective of any actual disruption whether caused by such activity or not. The public order has been further read to mean public peace, safety and tranquility. Freedom of speech is not regarded as absolute, when the same conflicts with other rights and protections.

13. Hate speech is defined in the Black Law's Dictionary as “Speech that carries no meaning other than the expression of hatred for some group, such as a particular race, especially in circumstances in which the communication is likely to provoke violence”. Hate speech constitutes a criminal charge under Section 153(A) I.P.C., which is the offence of promoting communal disharmony or feelings of hatred between the different religious, racial, language or regional groups or castes or communities. Section 505 I.P.C., criminalises the act of delivering speeches that incite



expression widely in recent times and give rise to social unrest and public disturbance. Social networkings have become the most ordinary tool for spreading hate speech.

14. In the case on hand, the petitioner has allegedly used filthy, vulgar and derogatory words as against the present Chief Minister and as well as the Ex.Chief Minister. It is necessary to refer the words uttered by the petitioner, which are extracted as follows:

“ கேரளத்தில் நல்ல ஆத்தாளுக்கும் அப்பனுக்கும் பிறந்தவன் முதலமைச்சராக இருக்கிறான், இங்கே அப்படி இல்லை என அருவருக்கத்தக்க விதமாக பேசினார், இதனால் சாலையில் நடந்து சென்றவர்கள் முகம் கழித்துச் சென்றார்கள்,”

15. In Crl.O.P.(MD)No.17209 of 2021, the President of Madurai Congress Committee has filed an intervening petition alleging that the petitioner in his speech has supported the banned terrorist organization (LTTE), that the petitioner had directly threatened the members of the Congress Party by stating that LTTE can perform incidents such as the suicide bombing which killed Rajeev Gandhi and that his speech was only to incite incidents of violence and that therefore, the petitioner is not entitled to be enlarged on bail.

16. As rightly pointed out by the learned Counsel for the intervenor, in the F.I.R., it was alleged that the petitioner had given speech as stated by the intervenor. As rightly contended by the learned Additional Public Prosecutor appearing for the State, considering the speech allegedly given by the petitioner is per se derogatory and defamatory and exhibited vulgarity.

17. It is also not in dispute that when the petitioner was in judicial custody in connection with a case in Cr.No.559 of 2021, on the file of the Thiruppanandal Police Station, he has filed a petition for bail before this Court in Crl.O.P.(MD)No.9381 of 2021 and he has also given an undertaking affidavit stating that he would not indulge in such activities in future and that this Court, by recording his undertaking affidavit and also affidavit of his wife to the effect that the petitioner was suffering from urinal track infection for several days, has granted conditional bail vide order dated 06.08.2021.

18. It is the specific contention of the prosecution that despite the specific undertaking given by the petitioner and the recording of the same by this Court, the petitioner has been committing the similar offences again and again and they have produced the copy of the earlier undertaking given by the petitioner and in that affidavit, he has stated as follows:



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3, நான் சட்டத்தையும், நீதிமன்ற மேலாண்மையையும் மிகவும் மதிக்கின்ற குடிமகன ஆவேன், எனது காணொளிகள் அனைத்தும் சட்டத்திற்கு உட்பட்ட யூடியூப் நிர்வாகம் கொண்டிருக்கிற விதிமுறைகளுக்கு உட்பட்ட வகையில் உருவாக்கப்பட்டவை ஆகும், தவறான காணொளிகளை அதன் சட்ட விதிகளுக்கு உட்பட்டு யூடியூப் நிர்வாகமே நீக்கி விடும் பட்சத்தில், அரசியல் முன் வெறுப்பு காரணமாக என் மீது மேற்கண்ட வழக்கு தொடரப்பட்டு நான் சிறையில் இருந்து வருகிறேன்,

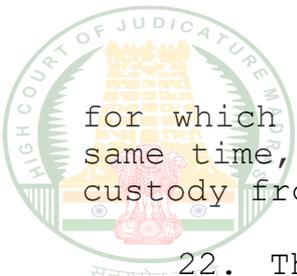
4, சட்டத்திற்கு உட்பட்டு நான் வெளியிட்டு வரும் காணொளிகள் எவரையேனும் காயப்படுத்தி இருக்கும் பட்சத்தில் எதிர்காலத்தில் இதுபோன்ற காணொளிகளை நான் உறுதியாக வெளியிட மாட்டேன் எனவும் நேதிய தண்டனைச் சட்டம் பிரிவு 153 A விவரித்துள்ளபடி இரு பிரிவினருக்கிடையே விரோத உணர்ச்சிகளை தூண்டும் வண்ணம் காணொளிகள் வெளியிட மாட்டேன் எனவும் மாண்பமை நீதிமன்றத்தில் பணிவோடு உறுதி கூறுகிறேன், சட்ட நெறிகளுக்கு உட்பட்டு, எனது செயல்பாடுகளை அமைத்துக் கொள்வேன் எனவும் பணிவோடு தெரிவித்துக் கொள்கிறேன்,”

19. When the above petition is pending for enquiry, the learned Counsel for the petitioner has filed another undertaking affidavit given by the petitioner, where under he has stated as follows:

“ I do hereby undertake that I will not make any derogative remarks against any person and I will not make any personal remarks against any political leaders. The words that I uttered on the fateful day in the protest came out my mouth in fit of anxiety and I am sincerely regretting and repenting for the words I uttered against the Chief Minister on that day. I further undertake that this kind of occurrence will never happen in future.”

20. As rightly contended by the learned Counsel for the petitioner, in the undertaking affidavit filed before this Court on 15.11.2021, has specifically undertaken that he will not make any derogative remarks against any person and he will not make any personal remarks against any political leaders and that this kind of occurrence will never happen in future.

21. As rightly contended by the learned Additional Public Prosecutor appearing for the State, despite earlier undertaking affidavit, the petitioner has allegedly committed similar offences,



for which the above two cases came to be registered. But at the same time, it is not in dispute that the petitioner is in judicial custody from 11.10.2021 in connection with the first case.

22. The learned Counsel for the petitioner would submit that the petitioner is having health issues and he is in need of medical treatment.

23. On considering the entire facts and circumstances and taking note of the specific undertaking given by the petitioner that he will not make any derogative or personal remarks against any person and also the fact that the petitioner is in judicial custody from 11.10.2021, and considering his health issues, this Court is inclined to grant bail to the petitioner subject to the following conditions:

24. Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the concerned Judicial Magistrates;

i) the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate/concerned court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity;

ii) the petitioner shall deposit a sum of **Rs.25,000/- (Rupees Twenty Five Thousand only) for each case to the credit of the Chief Minister Public Relief Fund, Government of Tamil Nadu, in IOB, Secretariat Branch, Chennai-9 (Account No.11720 10000 00070, IFSC Code: IOBA0001172), without prejudice to his rights and contentions before the trial Court and produce the receipt/acknowledgment before the concerned Court while executing sureties.**

(iii) the petitioner shall report before the respondent police in Crl.O.P.(MD)No.17209 of 2021 daily at 10.30 a.m for a period of fifteen days and thereafter report before the respondent police in Crl.O.P.(MD)No.17587 of 2021 daily at 10.30 a.m for a period of another fifteen days and thereafter as and when required for interrogation;

(iv) the petitioner is directed not to make any derogative speech or remarks directly or through any medium and in case of violation of the said direction, the respondent police is directed to take necessary steps for cancellation of bail immediately.

v) the petitioner shall not tamper with evidence or witness.

vi) the petitioner shall not abscond during trial.

vii) On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions



have been imposed and the petitioner released on bail by the 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].

viii) If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

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sd/-  
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Sub-Assistant Registrar (C.S.)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

- 1 THE JUDICIAL MAGISTRATE,  
THIRUVIDAIMARUTHUR, THANJAVUR DISTRICT.
- 2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,  
THANJAVUR DISTRICT AT KUMBAKONAM.
- 3 THE JUDICIAL MAGISTRATE,  
PADMANABHAPURAM, KANYAKUMARI DISTRICT.
- 4 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,  
KANYAKUMARI DISTRICT AT NAGERCOIL.
- 5 THE SUPERINTENDENT,  
CENTRAL PRISON, PALAYAMKOTTAI.
- 6 THE INSPECTOR OF POLICE  
THUCKALAY POLICE STATION, KANYAKUMARI DISTRICT.
- 7 THE INSPECTOR OF POLICE,  
THANJAVUR CCD III POLICE STATION,  
THANJAVUR DISTRICT.
- 8 THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO:

THE OFFICER INCHARGE,  
GOVERNMENT OF TAMIL NADU,  
CHIEF MINISTER PUBLIC RELIEF FUND IN IOB,  
SECRETARIAT BRANCH, CHENNAI-9.

+2 CC to Mr.A.MOHAMED HASHIM, Advocate (SR-8529[I] dated 25/11/2021)

ORDER IN  
CRL OP(MD) No.17209 of 2021  
Date :25/11/2021

SSL  
MK/VR/SAR.I/26.11.2021/9P/12C