

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on	08.09.2020
Delivered on	17 .09.2020

PRESENT

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CRL.O.P. (MD) . Nos.9274 and 9290 of 2020

S.Sridhar

...Petitioner/A4
in Both petitions

Vs.

Additional Superintendent of Police,
CBI, SC II, New Delhi.

Represented by,

Additional Superintendent of Police ...Respondent/Complainant
in Both petitions

Case No.RC 0502020 S0008

...CRL OP(MD)No.9274 of 2020

Case No.RC 0502020 S0009

...CRL OP(MD)No.9290 of 2020

J.Selvarani

...Intervenor Petitioner/ Mother of Deceased
in CRL MP(MD)Nos.4507 and 4505 of 2020
in CRL OP(MD)Nos.9274 and 9290 of 2020

For Petitioner : Mr.G.Rajasekar, Advocate.
in both Petitions

For Respondent : Mr.Vijayan Selvaraj,
Special Public Prosecutor for CBI
in both Petitions

For Intervenor : Mr.T.Lajapathi Roy
in both Petitions

PETITIONS FOR BAIL UNDER SECTION 439 OF THE CODE OF CRIMINAL
PROCEDURE.

COMMON PRAYER :-

For Bail in Case No.RC 0502020 S0008 and Case No.RC 0502020
S0009 on the file of the respondent/CBI respectively.

COMMON ORDER : The Court made the following order :-

The petitioner is Accused No.4 in both Cases in RC 0502020 S0008 and RC 0502020 S0009, respectively, on the file of the respondent/CBI, for the offences punishable under Sections 342, 302, 201 r/w 109 of the Indian Penal Code. The petitioner was arrested and remanded to judicial custody on 02.07.2020, seeking bail, the present petitions have been filed.

2. The aforesaid case in RC 0502020 S0008 relates to the death of one Benniks, S/o.Late P.Jeyaraj, and RC 0502020 S0009 relates to the death of P.Jeyaraj, father of the deceased Benniks, both died in judicial custody.

3. The brief facts leading to the filing of the present bail petitions are as follows:

3.1. The deceased in these cases, namely Benniks and Jeyaraj were arrested relating to Crime No.312 of 2020, for the offences punishable under Sections 188, 269, 294(b), 353 and 506(2) of the Indian Penal Code on the file of Sathankulam Police Station, and both of them were remanded to judicial custody and lodged in Sub Jail, Kovilpatti on 20.06.2020. Subsequently, on 22.06.2020, at about 07.35 p.m., the deceased Benniks complained of wheezing problem and he was immediately taken to the Government Hospital, Kovilpatti, where he died at about 09.00 p.m. Based on the complaint given by the Jail Superintendent, Sub Jail, Kovilpatti, an FIR was registered in Crime No.649 of 2020 under Section 176(1A)(i) of the Code of Criminal Procedure, at Kovilpatti East Police Station.

3.2. Thereafter, on the very same day, at about 10.20 p.m., the deceased Jeyaraj also fell sick and he was also taken to the Government Hospital, Kovilpatti and he died at about 05.40 a.m., on 23.06.2020. Once again, based on the complaint filed by the Jail Superintendent, Sub Jail, Kovilpatti, an FIR was registered in Crime No.650 of 2020 under Section 176(1A)(i) of the Code of Criminal Procedure.

3.3. In both the cases, inquest was conducted by the learned Judicial Magistrate No.1, Kovilpatti. Thereafter, autopsy was conducted by a Board of three doctors of Forensic Medicine and Toxicology Department of Tirunelveli Medical College, Tirunelveli and they gave an opinion that, both the deceased would appear to have died of complications of blunt injury sustained.

3.4. In the meantime, the Madras High Court, Madurai Bench, has taken *Suo Motu* Writ Petition in W.P.(MD)No.7042 of 2020 and ordered investigation of the case by CBCID. Based on the direction, CBCID took up the investigation and registered two FIRs in Crime Nos.1 and 2 of 2020, and during investigation, the complicity of the

petitioner *prima facie* established and he was arrested by CBCID on 02.07.2020. Subsequently, investigation of both the cases was transferred to CBI, by the Government of Tamil Nadu, vide Notification dated 29.06.2020. Subsequently, the Government of India, also issued a Notification for CBI enquiry on 06.07.2020. Based on the same, the CBI took over the investigation and registered the fresh First Information Reports in RC 0502020 S0008 and RC 0502020 S0009. During investigation, it was found that after the arrest of both the deceased, they were kept in Sathankulam Police Station, and at the instigation of the petitioner herein, the other accused, namely, Sub-Inspector of Police and Constables brutally tortured the deceased and caused as many as 18 injuries on both the deceased, subsequently, they were died due to complications of blunt injuries sustained by them. Now, seeking bail, the petitioner is before this Court with the present bail petitions.

4. According to the petitioner, he was the Inspector of Police/Station House Officer, Sathankulam Police Station, and he was not in the Police Station on the date of occurrence and he was posted at the "Corona" Bandobast duty. The petitioner is no way connected with the occurrence and he never instigated the other accused to torture the deceased. Since the petitioner being a Station House Officer of Sathankulam Police Station, he was made as an accused. It is further contended that now after taking up the investigation, the CBI took the petitioner into police custody, and custodial interrogation was also over. While CBCID conducting investigation, the petitioner voluntarily surrendered before the CBCID, and co-operated with the investigation, he will not tamper with the witnesses and he will not cause any hindrance to the investigation. The petitioner is a law abiding citizen and he would not flee from justice. The learned counsel would further submit that earlier the petitioner suffered a severe spinal card injury and he was admitted in the Rajaji Government Medical College Hospital, Madurai, for nearly ten days, the pain is still subsisting and he needs better medical assistance, and on medical ground also, the petitioner seeks bail.

5. Opposing the bail petitions, the learned Special Public Prosecutor, for CBI Cases, would submit that, now the investigation is in progress and number of witnesses yet to be examined. At this stage, if the petitioner is released on bail, there is high possibility that the petitioner will tamper with the witnesses. He would further submit that the petitioner being the Station House Officer of Sathankulam Police Station, at his instigation only, the custodial torture has taken place, and the materials collected during investigation clearly reveal that the petitioner was present in the Police Station and instigated and abetted his subordinates, who have severely beaten both the deceased and caused bleeding injuries all over the body. The post-mortem autopsy reports also revealed that more than 18 injuries were found all over the body.

<http://www.judis.nic.in> investigation, two women Head Constables working in the same

police station, who are the eye witnesses to the occurrence, have given statements implicating the petitioner in the crime and one Head Constable also gave a statement before the learned Judicial Magistrate under Section 164(5) of the Code of Criminal Procedure. That apart, number of other witnesses also spoke about the presence of the petitioner in the police station at the time of occurrence. The materials available on record *prima facie* disclose that this petitioner repeatedly instigated his subordinates to torture the deceased. That apart, the petitioner also fabricated the First Information Report in Crime No.312 of 2020, against the deceased subsequent to their arrest. It is further stated that now the investigation is in progress and more evidence is expected against the petitioner, and others. The petitioner, being the police officer, if he is released on bail, he will influence the general public, and he will tamper with the witnesses, and it will be detrimental to the investigation. With regard to seeking bail on medical ground, there is no material available on record to show that the petitioner is suffering from ailment and if requires, he will be given adequate medical assistance. Opposing the bail applications, CBI also filed a detailed counter-affidavit. The respondent also produced the entire Case Diary for perusal of this Court.

6. The learned counsel appearing for the intervenor would submit that it is a heinous crime of custodial death, both the deceased were illegally detained in the police station and they were subjected to custodial torture and due to complications of injuries sustained, both the father and son died. If the petitioner is released on bail, he will tamper with the witnesses. Further, the petitioner was already an accused in another criminal case for an offence under Section 307 of the Indian Penal Code and he is having bad antecedents.

7. I have considered the rival submissions and also perused the materials available on record including the Case Diary produced by the respondent.

8. It is a case of alleged custodial death, in which, two precious lives of a father and son, namely Jeyaraj and Benniks were lost. From the materials available on record, it could be seen that, on 19.06.2020, the deceased Jeyaraj was taken to the Police Station by the petitioner and one Sub-Inspector of Police, viz., Balakrishnan and another Police Constable Muthuraja and the petitioner only asked the other police personnel to lodge Jeyaraj in the police lock-up. Thereafter, the deceased Benniks went to the police station and enquired with the police personnel about the reason for the arrest of his father Jeyaraj. At that time, there was a petty quarrel in the police station between the deceased Benniks and the Sub Inspector of Police Balakrishnan, and the petitioner, being the Inspector of Police, came out of his room, and directed police personnel to close the main gate and instigated the other

accused to beat Benniks, and all the other accused have beaten him. The materials available on record also disclose that, the petitioner repeatedly instigated the other accused to beat both deceased. Two women Head Constables working in the very same Police Station, who are eye witnesses to the occurrence, also gave statements during investigation to that effect. That apart, there are materials available on record to show that, only after the arrest of Jeyaraj, a complaint has been prepared in the Police Station and First Information Report has been registered in Crime No.312 of 2020 for various offences as aforesaid. The brutality continued throughout the night, and both the deceased suffered serious bleeding injuries and they were also asked to change the dress many times, subsequently, they were produced before the learned Judicial Magistrate, Sathankulam, on 20.06.2020 and were remanded to judicial custody and lodged in Sub Jail, Kovilpatti.

9. Subsequently, on 22.06.2020 at 07.35 p.m., Benniks developed wheezing problem and he was taken to the Government Hospital, Kovilpatti, where he died at about 09.00 p.m. On the very same day, the deceased Jeyaraj also fell ill and he was taken to the very same hospital, where he died on 23.06.2020 at 05.40 a.m. The post-mortem autopsy was conducted on the dead body of both the deceased on 24.06.2020, wherein, number of blunt injuries were found on the body of Jeyaraj and Benniks and the doctors gave an opinion that both the deceased would appear to have died of complications of blunt injuries sustained.

10. Now, it is the contention of the petitioner that he was not present in the scene of occurrence and he has been implicated only on the ground that he was the Station House Officer of Sathankulam Police Station. However, the materials available on record *prima facie* disclose that the petitioner was present in the Police Station at the time of occurrence and only at his instigation, his subordinates have beaten both the deceased and caused serious injuries on them. Out of the witnesses examined, at least eight witnesses spoke about the involvement of the petitioner in the above said crime. Out of witnesses examined, two are eye witnesses to the occurrence and other witnesses also spoke about the fact that the petitioner only took Jeyaraj from his shop to the Police Station and illegally detained him in the Station. That apart, there are also materials available on record to show that only at his direction, the First Information Report was registered against the deceased after they have been taken to the Police Station. All the materials *prima facie* establish the involvement of this petitioner in the alleged crime.

11. Coming to the next contention of the petitioner, though the custodial interrogation is over, the investigation is yet to be completed, it is in the crucial stage. The petitioner being a police official, if he is released on bail, there is high possibility that he would influence the other witnesses and also likely to tamper

with the witnesses, especially, some of the witnesses are police personnel working in the same Police Station.

12. Insofar as the medical ground is concerned, except the oral submission of the learned counsel for the petitioner, there is no other material available on record to show that the petitioner is having any ailment, which requires immediate treatment in a Specialised Hospital. Now, it is stated that another criminal case for the offence under Section 307 of the Indian Penal Code is also pending against the petitioner.

13. It is well settled law that while granting bail, the Court is to keep in mind whether any *prima facie* ground is available to believe that the accused had committed the offence, the nature of accusation, seriousness of the offence, character of the accused and also reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, and if the accused is released on bail, there is a chance of fleeing from justice.

14. In, 2005 (8) SCC 21 [*State of U.P. through CBI Vs. Amarmani Tripathi*], the Hon'ble Supreme Court has held as follows:

"It is well settled that the matters to be considered in an application for bail are,

(i) whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the charge;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behavior, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being tampered with; and

(viii) danger, of course, of justice being thwarted by grant of bail (see *Prahlad Singh Bhati V. NCT, Delhi* [2001 (4) SCC, 280] and *Gurcharan Singh V. State (Delhi Administration)* [AIR 1978 SC 179]). While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused".

15. In, 2001 (4) SCC 280 [Prahlad Singh Bhati Vs. NCT, Delhi], the Hon'ble Supreme Court has also held as follows:

"The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behavior, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

16. In the instant case, there are *prima facie* materials available on record to reasonably believe that the petitioner has committed the offence. That apart, considering the gravity of the offence, and also considering the position of the petitioner being an Inspector of Police, there is a reasonable apprehension that the witnesses are likely to be tampered with, especially, some of the witnesses are police personnel working in the same Police Station. Furthermore, investigation is yet to be completed it is in crucial stage. Considering the above circumstances, I am **not** inclined to grant bail to the petitioner at this stage. Hence, the petitions stand dismissed.

sd/-
17/09/2020

/ TRUE COPY /

/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

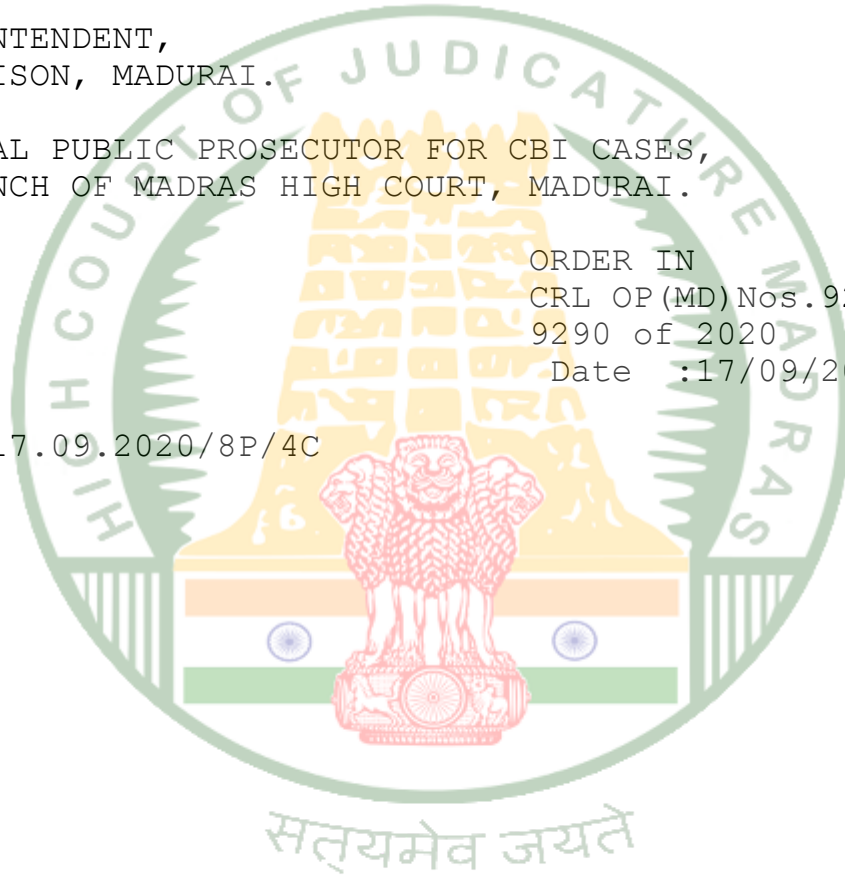
Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

- 1.ADDITIONAL SUPERINTENDENT OF POLICE,
CBI, SC II, NEW DELHI.
REPRESENTED BY,
ADDITIONAL SUPERINTENDENT OF POLICE.
- 2.THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 3.THE SPECICAL PUBLIC PROSECUTOR FOR CBI CASES,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN
CRL OP(MD)Nos.9274 and
9290 of 2020
Date :17/09/2020

SML
TK/PN/SAR.3/17.09.2020/8P/4C



WEB COPY