



Citation : CDJ 2017 MHC 1025

Court : High Court of Judicature at Madras

Case No : CRL. O.P. No. 3696 of 2017

Judges : THE HONOURABLE DR. JUSTICE P. DEVADASS

Parties : Sathish @ Sathishkumar & Another Versus State Rep. by its the Station House Officer, Puducherry

Appearing Advocates : For the Petitioners: M. Ramya for N. Ramesh, Advocates. For the Respondent: A. Tamilvanan, Government Advocate, Puducherry.

Date of Judgment : 28-02-2017

Head Note :

Criminal Procedure Code, 1908 - Section 436, Section 437, Section 439 - Indian Penal Code, 1860 - Section 34, Section 201, Section 302, Section 364, Section 404 - Constitution of India - Article 21 - Bail - Petitioners/A4 and A5 sought for bail - Hence this Appeal -

Court held - Petitioners, offence under Section 201 I.P.C alone is attracted - Offence under Section 201 IPC, procedure prescribed under Code of Criminal Procedure is to treat it as a bailable offence - After denial of bail their continuance in jail becomes not in accordance with law - Petitioners were entitled to bail - Bail granted - Petition allowed -

Paras: (32)

Case Referred:

[MANEKA GANDHI VS. UNION OF INDIA \(AIR 1978 SC 597\)](#)].

Judgment :

(Prayer:-Criminal original petition filed under Section 439 Cr.P.C., to enlarge the petitioner on bail in Cr.No.10 of 2016 on the file of the Station House Officer, Lawspet Police Station, Puducherry.)

Bail petition.

2. Offences alleged are under Sections 364, 302, 404, 201 r/w 34 of I.P.C.

3. Petitioners are A-4 and A-5 in this case.

4. According to the learned counsel for the petitioners, even taking the allegations as such, neither an offence under Section 364 IPC nor an offence under Section 302 of IPC nor an offence under Section 404 IPC is attracted towards the petitioners. If at all, it could be only under Section 201 IPC. It would be screening of the offence, Of course, in connection with a murder case. Even then it will not be a capital offence.

5. The learned counsel for the petitioners contended that the Court below has not applied the relevant legal provisions correctly. As per law, the petitioners are entitled to be granted bail. But they were denied bail. Their detention is against law. Petitioners are in jail since 20.12.2016. Thus, they may be granted bail.

6. On the other hand, the learned Government Advocate would contend that a person has been kidnapped, murdered and the

dead body was burnt and the ashes were immersed in the sea. This is very serious. Petitioners also have participated in the commission of the offence.

7. I have given my anxious consideration to the rival submissions and perused the case-diary.

8. This case is more than a Sherlock Holmes thriller. Suddenly a Police Constable in Puducherry went missing. It remained a mystery. It rocked the Puducherry Assembly. There were hue and cry throughout the Union Territory. However, the main accused moved freely and like others he also searched the missing man.

9. Sivanandam Roberts (A-1) and Arunagiri (deceased) are co-brothers. Their wives are sisters. A-1 owns 'Arutperum Jothi Ramalingaswamy College of Education' at Thavalakuppam in Puducherry. He is highly educated. He arranged his wife's sister Neuroja's marriage with Arunagiri, a Police Constable in Puducherry Traffic Police.

10. The co-brothers were very friendly. They used to take liquor together. Arunagiri is an ardent Siva devotee. He used to visit very often Saduragiri hills in the South. Besides being his co-brother, A-1 was his guide, philosopher and Adviser.

11. On 10.01.2016, at about 4 p.m, Arunagiri, lastly waved his hands to his wife. Thereafter, she has not seen him alive. On that day, around 5 p.m, Arunagiri called on A-1. Thereafter, no body knows what happened to him. He went missing. His wife waited anxiously at the door steps. She was disappointed. He did not come home on the next day at least on the next week. A-1 told everybody that on 10.01.2016, at about 5 p.m, Arunagiri came to him, a restless man, he advised him to go home and he left. Like others A-1 also searched him at several places. Yet his whereabouts is not known. Neuroja lost her patience.

12. Ultimately, on 6.2.2016, she lodged complaint with Lawspet Police Station, Puducherry. Police swung into action. He could not be found. Missing of Arunagiri has become a talk of the entire Union Territory. A question as to his disappearance was also raised in the Puducherry Assembly. The Hon'ble Chief Minister has assured immediate action. Higher Police Officials have pulled the lower level Officers. Disciplinary action was also threatened.

13. Pressure was mounted upon the Police. Investigation was speeded up. There were some source information. Needle of suspicion started looming towards A-1. On 17.12.2016, he broke down. He gave confessional statement. Based on his such disclosure statement, his friends Muthu Raj (A-2), Jothi @ Karunajothi (A-3) and Thangam @ Thangaraj (A-6) were arrested by the police. Thereafter, Sathish @ Sathishkumar (A-4) and Venkat @ Venkatesh (A-5) i.e., (petitioners) were arrested.

14. The incriminating materials collected revealed that Arunagiri suspected A-1 that he is having illegal intimacy with his wife. Arunagiri quarreled with him. A-1 was very much upset. When they travelled together in a bike, Arunagiri pushed him down. A-1 sustained injury. A-1's ill-will towards his co-brother got intensified. A-1 has decided to eliminate him.

15. In this backdrop of the matter, on 10.1.2016, evening Arunagiri was tricked to come to Naavarkulam in Puducherry where they used to take liquor. Arunagiri thought that it is going to be their usual feast, but he had an unusual different feast. On the instruction of A-1, A-2, A-3 and A-6 also came there. They had liquor. As instructed by A-1, A-2, A-3 and A-6 have assaulted Arunagiri on his head with broken beer bottles. He died. One of the accused took away the gold chain from the dead body. They have seated the dead body in A-1's Ford Fiesta car and roamed. They were perplexed. The car went to the house of Danush, a servant of A-1. They had meals. Danush did not know that they have come to his house with a dead body.

16. A-1 instructed A-2, A-3 and A-6 to dispose of the dead body. A-1 left the dead-man's Hero Honda bike in the two-wheeler parking area in Villupuram Railway Station to make others to believe that Arunagiri had left by train to Saduragiri Hills and forgot about him.

17. A-2, A-3 and A-6 took the dead body in the car to Arisankuppam in Cuddalore. They have purchased petrol from a Petrol Bunk and sugar from a shop and near a bush they have burnt the dead body of Arunagiri. The deceased was then 33 years old. well built and tall. His dead body could not wholly burn. A-2, A-3 and A-6 have concealed the half burnt dead body near a bush.

18. On the next day, at the Cuddalore OT (Old Town) Bus Stand, A-2, A-3, A-6 met A-4 and A-5 (petitioners) who are Auto Drivers. They have elicited their assistance to fully burn the dead body of Arunagiri. A-2 to A-6 fully burnt the dead body. Arunagiri became ashes. They have immersed the ashes in the sea water near the Cuddalore OT Port. So ended the life of a Puducherry Traffic Police Constable.

19. In connection with this case, petitioners, namely, A-4 and A-5 were arrested and remanded on 20.12.2016. Since then

they are in jail. Now, what offence A-4 and A-5 have committed ?. What is their position in Criminal Law, substantial, as well as procedural, namely, Indian Penal Code and Criminal Procedure Code, 1973 ?. Whether they could be granted bail ?.

20. Petitioners have come to the picture only after 10.1.2016. They were not present at the scene of crime when the killing took place. They were not present when Arunagiri was beaten to death. They came to the picture subsequent to the death of the deceased. They have seen only the half charred lifeless body of Arunagiri at a lonely place in Cuddalore. They came to be associated with A-2, A-3 and A-6, when the dead body of Arunagiri was disposed of.

21. In such circumstances, neither Section 364 nor Section 302 IPC r/w Section 404 IPC will apply to the petitioners. The only section attracted as against the petitioners is Section 201, of course it is Section 201 r/w 302 of IPC.

22. Section 201 IPC reads as follows:

"201. Causing disappearance of evidence of offence, or giving false information to screen offender —

Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

If a capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with imprisonment for life.—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

If punishable with less than ten years' imprisonment.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both."

23. An illustration has been given to Section 201 IPC. It runs as under:

"Illustration

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine."

24. In the Ist Schedule to the Code of Criminal Procedure, 1973 an offence under Section 201 IPC has been classified as under:

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what Court Triable
201	Causing disappearance of evidence of an offence committed or giving false information touching it to screen the offender, if a capital offence	Imprisonment for 7 years and fine.	According as the offence in relation to which disappearance of evidence is caused is cognizable of non-cognizable. Non cognizable.	Bailable	Court of Session.

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what Court Triable
	If punishable with imprisonment for life or imprisonment for 10 years.If punishable with less than 10 years' imprisonment.	Imprisonment for 3 years and fine.Imprisonment for a quarter of the longest term provided for the offence, or fine, or both	Non-cognizable	Bailable	Magistrate of the first class,Court by which the offence is triable

25. The offence complained of under Section 201 r/w Section 302 IPC is cognizable. It is triable by a Court of Sessions. The 'mens rea' (guilty mind) required for the offence is that the accused must have the knowledge of the principal offence, in this case killing of Arunagiri. It will be imputed against if he has reason to believe that the principal offence has been committed. Whatever might be the nature of the principal offence and magnitude of the punishment prescribed therefor.

26. Section 436 Cr.P.C deals with grant of bail in bailable offences. Section 437 Cr.P.C deals with grant of bail in non-bailable offences. They were exercised by Magistrates. Section 439 Cr.P.C deals with similar power of this Court and the Sessions Court. Sections 436, 437 and 439 Cr.P.C all comes after jail. Arrest may be by police (See Sec.41 Cr.P.C). It may be also by the Court by accepting the surrender of the accused (See Sections 436, 437 Cr.P.C).

27. Section 436 Cr.P.C runs as under:

"436. In what cases bail to be taken.-(1) When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, and is prepared at, any, time-, while-in, the custody of such officer or at any stage of the proceeding before such court to give bail, such person shall be released on bail:

Provided that such officer or court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided:

Provided further that nothing in this section shall be deemed to affect the provisions of sub-section (3) of section 116 [or section 446A].

(2) Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the court or is brought in custody and any such refusal shall be without prejudice to the powers of the court to call upon any person bound by such bond to pay the penalty thereof under section 446."

28. The basic characteristic feature of a bailable offence and non- bailable offence is that in case of bailable offence, bail is a matter of right. Bail is the rule, jail is the exception. In fact, it is the duty of the learned Magistrates and the Sessions Judges to inform the accused involved in a bailable offence that he has the right to go on bail. Non bailable offence does not mean not bailable. It is also bailable, but opportunity should be given to the prosecution and the Court has to consider the merit of the matter and decide whether the accused could be granted bail or denied bail. Thus, from the above, it is seen that bail in a bailable offence is made as a matter of right. Deferring grant of bail to a person involved in a bailable offence will arise only when he refuses to offer bail.

29. The learned Principal Sessions judge has denied the petitioners bail in bailable offence not on the ground that they have refused bail or refused to offer bail. That also will not arise in this case because they themselves have applied for bail. Learned Sessions Judge seems to have frightened because of reading Section 201 IPC together with Section 302 I.P.C. The learned Judge ought not to have been carried away by such kind of adding.

30. A Court is expected to administer justice in accordance with law. It must read the provisions of law and apply it to the facts of the case. And it shall ignore other things. In this case, towards the petitioners, an offence under Section 201 I.P.C alone is attracted. It is what the case of the prosecution also.

31. Article 21 in the Constitution of India is more than British Magna Carta and American Bill of Rights. Article 21 guarantees that 'no one shall be deprived of his life or liberty except by procedure established by law'. Judicial orders in accordance with procedure established by law are exceptions to this fundamental right guaranteed by the Constitution. But, the procedure to incarcerate a person should be 'fair', 'reasonable' and 'equitable' [see **MANEKA GANDHI VS. UNION OF INDIA (AIR 1978 SC 597)**].

32. As regards an offence under Section 201 IPC, the procedure prescribed under the Code of Criminal Procedure is to treat it as a bailable offence. (see Section 436 Cr.P.C and the first schedule to the Code). In the case before us, after the denial of bail their continuance in jail becomes not in accordance with law.

33. Considering all the above aspects, I hold that the petitioners are entitled to bail.

34. In view of the foregoings, ordered as under:

(i) Bail granted;

(ii) Two sureties, they as well as the petitioners shall execute a bond for Rs.10,000/- (Rupees Ten thousand only) each for a likesum to the satisfaction of the learned Judicial Magistrate No.I, Puducherry.

(iii) Petitioners shall report before the respondent police as and when required for interrogation.