

State Vs. Veerapandy and ors.

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Court : Chennai

Decided On : Jan-11-1979

Reported in : 1979CriLJ455

Judge : Sathar Sayeed, J.

Appellant : State

Respondent : Veerapandy and ors.

Judgement :

ORDER

Sathar Sayeed, J.

1. This petition has been filed by the State to cancel the bail granted to the respondents herein, in Crl. M. P. No. 1281 of 1978 by the learned Assistant Sessions Judge, Ramanathapuram at Madurai by his order dated 10-11-1978.

2. The case of the prosecution is that the respondents forming themselves into an unlawful assembly on the night of 5-9-1978 at Vetrilaiurani having armed themselves with aruvals and vel sticks waylaid the deceased Perumal and murdered him. The murder of Perumal, according to the prosecution, is a gruesome one. It is the case of the prosecution that the accused cut and removed the head of the deceased and also one arm and one leg and the penis and not contented with that they took the headless trunk, cut the limbs and threw the same

into an old well. It is further stated that in order to suppress the gruesome crime that they have committed, they took the head of the deceased and buried it near A-I's father's grave. The accused having committed the murder absconded themselves and subsequently surrendered before the Judicial Second Class Magistrate, Koilpatti, on 6-10-1978.

3. On 10-11-1978 the accused (respondents herein) filed a petition before the Sessions Court, Ramanathapuram for enlarging themselves on bail. The learned Sessions Judge at that time was on camp and, therefore, the bail petition was heard by the Assistant Sessions Judge, Ramanathapuram. It is the contention of the Public Prosecutor appearing before me, that the granting of bail to the respondents herein, was opposed in view of the gruesome murder committed by them and in spite of the objections by the Public Prosecutor, Madurai, the accused, who are the respondents herein, were released on bail. The order passed by the learned Assistant Sessions Judge, is as follows

Public Prosecutor opposes bail. The petitioners are in custody for the past one month, after surrender before the court. The son of the deceased is stated to be the only eye witness to the occurrence. So, no question of tampering with his evidence would arise. In the said circumstances, I consider that the petitioners may be enlarged on conditional bail. Therefore, I direct the release of the petitioners on bail on their executing a bond for Rs. 5000 each with two sureties each for a like sum, to the satisfaction of the Judicial Second Class Magistrate, Sattur. The petitioners shall remain at Madurai until further orders and report themselves before Judicial Second Class Magistrate No. 3 at Madurai daily at 11 a. m.

It is contended before me by the learned Public Prosecutor that the respondents here' in have committed a heinous crime in a most brutal manner as seen from the F.I.R. a copy of which is filed along with this petition. The deceased has only a son, who is the only eye witness to the murder and who is aged 16 years, who was with his father (deceased) when the murder has taken place. The widow of the deceased is also alive and the only eye witness who is the son of the deceased, is with his mother Lakshmi.

4. It is further contended by the prosecution that after the respondents were released On bail, they all contravened the condition imposed on them and they came to the place of occurrence in search of the son with dangerous weapons to see that the son of the deceased who is the only eye witness is also finished so that they can suppress the ocular testimony of their heinous crime. To this effect, the widow of the deceased has also lodged a complaint to the Inspector of Police, Sattur and also gave a telegram to the Superintendent of Police, Ramanathapuram. The Inspector of Police, Sattur who has filed the affidavit for cancellation of bail, further states that on 15-11-1978 the respondents herein contravening the conditions imposed on them threatened the wife of the deceased and her son with dire consequences and, therefore, the police posted some men to give protection to the wife of the deceased and her son. But subsequently, this police protection was withdrawn.

5. Subsequent to the withdrawal of the police protection, to the deceased's wife and her son, on 18-12-1978, at about 8 p.m. all the accused visited the scene (sic) village and threatened the wife of the deceased and her son not to give any evidence about the occurrence, and have warned them that they will meet the same fate of her husband. This warning of the accused terrorised and made the wife of the deceased shiver and she, on 19-12-1978, at about 8 a. m. lodged a complaint to the Sub Inspector of Police, Venr bakottai Police station which was registered as crime No. 59 of 1978 under Section 147 and Section 506 Part II I. P. C. The two visits of the accused on 15-11-1978 and 18-12-1978 to the place of occurrence contravening the conditions imposed on them, brings to light that the respondents herein are trying or attempting to commit the murder of the son and the wife of the deceased in order to see that no evidence is available to the prosecution for prosecuting the case and rendering justice.

6. The Inspector of Police who has filed the affidavit for cancellation of bail further states that the only eye witness to substantiate and prove the guilt of the accused is the son of the deceased and this boy is under protection and custody of his mother who is only a helpless widow. Having regard to the facts and circumstances of the case and the manner in which the murder has taken place, if the accused are allowed to trod contravening the conditions imposed on bail there

will be a failure of justice and tampering of evidence by the accused. Under such circumstances, the Inspector of Police prays that the bail granted by the learned Assistant Sessions Judge to the respondents herein, be cancelled.

7. The respondents have Sled a counter to this petition. They denied the allegations of the affidavit Bled by the Inspector of Police and contends that they have not committed the murder of Perumal and they have been falsely implicated in the said murder ease. They further contend inter alia that they are law-abiding citizens and they voluntarily surrendered in the court of the Judicial Second Class Magistrate on 6-10-1978 and they have not contravened any of the conditions imposed on them when they were let on bail nor they would tamper with witnesses as alleged by the prosecution. They farther contend that they have been residing at Madurai observing scrupulously all the conditions imposed on them and that they have not stirred out of Madurai Corporation limits. They further contend that if they had visited the scene village, the relations of the deceased could have caught hold of them and handed them over to the police and the very fact that they have not been caught hold ot by the relations of the deceased itself shows that the affidavit filed by the Inspector of Police is a baseless one. No affidavits from other persons of the village had been Bled by the police to support the case of the prosecution for cancellation of bail. They further contend that the apprehension of the police that the accused will tamper with the evidence and kidnap or do away with the only son of the deceased and the widow is only an imagination of the prosecution and, therefore, the respondents pray that the petition for cancellation of bail be dismissed.

8. I have heard the arguments of the learned Public Prosecutor and also the counsel appearing for the respondents. The learned Public Prosecutor contends that this is a case where a clean breast murder has taken place on 5-9-1978 and the deceased was murdered in a gruesome way. The head of the deceased was chopped off and one arm and one leg were also cut into pieces and in order to suppress the identity of the deceased, they cut the head from the body of the deceased and had buried the same near the grave of A-l's father. It appears prima facie that the murder committed by the respondents is a gruesome one. The very fact of cutting away the head of the deceased from the body itself shows that the

respondents do not want that there should be any evidence of the identity of the deceased. The question now for consideration is, has the prosecution substantiated its case by preponderance of probability and placed before court the materials for cancellation of bail? The further question is has the learned Assistant Sessions Judge exercised his judicial discretion as required under Sections 437 and 439 CrI. P.C.P

9. The offence under Section 302 I. P. C. is a non-bailable one. Accused arrested may be released on bail, but he shall not be so released if there appear reasonable grounds (underlining is mine) for believing that he has been guilty of an offence punishable with death or imprisonment for life. If the offence is proved by the prosecution, it cannot be denied that the accused have to be sentenced to death or imprisonment for life. Prima facie, the F. I. R. in this case clearly reveals that the accused have committed the murder of the deceased. The power of the court to grant bail is found in Section 439 CrI. P, C. This power has to be exercised by a High Court or Sessions Judge keeping in view Section 437 CrI. P. C., particularly in a case of non-bailable offence. Prima facie, from the facts of this case, it is made clear the prosecution has placed materials that the accused have murdered the deceased and there appears prima facie reasonable grounds for believing that the accused are guilty of an offence under Section 302 I. P. C. Under such circumstances, the duty of the court is to see whether a bail can be granted as has been done by the learned Assistant Sessions Judge. That apart has the prosecution in this application before me made out a case for cancellation of Bail? The relevant factor, while exercising the power, which should be taken by the court into consideration for cancellation of bail is to see whether from the affidavit filed by the prosecution has the prosecution by a preponderance of probability, made clear as it has been done in this case,| whether the accused are interfering with the course of justice by tampering with witnesses or have contravened the conditions imposed on them and thereby abused the liberty granted by court. It is no doubt true that when the accused have been let off or enlarged on bail, courts have to be careful and cautious in exercising power of taking back the accused in custody unless there is a reasonable apprehension that the accused would interfere and pollute justice which warrants the cancellation of bail. It is made clear by the affidavit filed by the Inspector of Police in this case,

that the accused who have been granted bail have contravened the conditions imposed on them having committed the gruesome murder, are trying to see that the only sole eye witness does not come forward to prove the case of the respondents herein. The very fact that a case has been registered by the police under Sections 147 and 506 Part II, I. P. C. against the accused subsequent to the murder of the deceased itself shows that the accused are trying to see that the sole eye witness viz, the son of the deceased, is either kidnapped or is also finished by them. No doubt, the respondents have filed a counter contending that if they had visited the place of occurrence, nearby people could have filed affidavits in this regard. But it should be remembered that nearby people would not like to be involved in a case of this kind and the police cannot obtain any affidavit for the said purpose. On the allegations made by the prosecution, I am satisfied that the accused have contravened the conditions imposed on them and are trying to see that no evidence is available for the prosecution to substantiate their case.

10. Learned Public Prosecutor contends that in spite of the fact that the Public Prosecutor has opposed before the Assistant Sessions Judge not to grant bail, the learned Assistant Sessions Judge has, contrary to the tenor of Section 437 Cr. P. C, has granted bail. The counsel appearing for the respondents contends that the contention of the Public Prosecutor for the grant of bail by the learned Assistant Sessions Judge has used his discretion under Section 439 Cr. P, C and has granted bail to the respondents. It should be noted. 'What is discretion' 'Discretion' when applied to court of justice, means 'sound discretion guided by law'. It must be governed by rule, not by humour. It must not be arbitrary, vague and fanciful, but legal and regular, and in the case of granting bail the discretion of the Judge must be exercised not in opposition to, but in accordance with, the established principles of law. In granting bail, the Judge has to consider whether a prima facie case has been made out by the prosecution. If a prima facie case has been made out by the prosecution and if there appear reasonable grounds for believing that the person accused has been guilty of an offence punishable with death or imprisonment for life, he shall not be released on bail pending disposal of the case, unless extraordinary circumstances intervene favouring the accused. No doubt, personal liberty, deprived, when bail is refused, is too precious a value of our constitutional system. But it should also be noted that when the prosecution

comes forward with a case that persons who have been released on bail are trying to interfere or attempting to thwart or pollute justice after obtaining benignant mercy of the court it should be viewed seriously. The power to take back in custody the accused who have been enlarged on bail has to be exercised with care and circumspection. But the power, though of an extraordinary nature, has to be exercised only in appropriate cases where it is clearly established by affidavits and by a preponderance of probabilities that the accused are trying to interfere with the course of justice. In this case, it is made clear that in spite of a condition imposed on the accused, not only the accused have contravened the conditions imposed on them while on bail, but they have also threatened to do away the sole eye witness to the case. Under such circumstances, the prosecution can establish its case in an application as the present one for cancellation of the bail on a preponderance of probabilities that the accused have attempted to tamper or has tampered with its witnesses, and that they have abused the liberty granted to them, and that there is a reasonable apprehension that they will interfere with the course of justice if no action is taken against them. In the present case, on the facts brought to my notice, I am satisfied that the accused have contravened the conditions imposed on them by the learned Assistant Sessions Judge and are threatening to do away with the son of the deceased in order to see that the best at evidence is not available to the prosecution. Under the circumstances, I cancel the bail granted by the learned Assistant Sessions Judge, Madurai in CrI. M. P. 1281 of 1978 by his order dated 10-11-1978. Ordered accordingly.