

CASE NO.:
Appeal (crl.) 1470 of 2005

PETITIONER:
State of Tamil Nadu

RESPONDENT:
S.A. Raja

DATE OF JUDGMENT: 26/10/2005

BENCH:
K.G. Balakrishnan & P.P. Naolekar

JUDGMENT:
J U D G M E N T
[Arising out of SLP (Criminal) No.3366 of 2005]
K.G. BALAKRISHNAN, J.

Leave granted.

An order passed by the learned Single Judge of the High Court of Madras at Madurai granting bail to the respondent herein is challenged before us. The respondent is one of the accused in a criminal case charged by the Inspector of Alangulam Police Station in Tirunelveli District. The charges are under Sections 147, 148, 120B, 341, 302, 207, 212 and 109 IPC read with Section 25(1) of the Arms Act.

The brief case of the prosecution is that one Aladi Aruna, an ex-Minister of the Government of Tamil Nadu, had gone for a morning walk along with one Ponraj on 31.12.2004. At about 7.15 a.m. while Aladi Aruna, Ponraj and one Socraties were walking through Pashupati Road, accused A3 accompanied by A2 and A4 intercepted Aladi Aruna and A3 attempted to shoot him with his country-made revolver but the revolver did not work whereupon A2 inflicted injuries on Aladi Aruna with Aruval (sickle) on the back of his head and when his friend Ponraj tried to save him, he was also attacked by A4 who inflicted injuries on his neck and head. Socraties also tried to save them, but A2, A3 and A4 turned against him and he could manage to escape from the scene of occurrence. A1, who was also present at the place of occurrence, warned A2, A3 and A4 since he sensed that somebody was coming and all of them ran away from the place of incident. Aladi Aruna and Ponraj died at the spot. Accused persons fled the place on a motorbike.

On the basis of the information collected during the investigation, present respondent was arrested on 30.1.2005. The prosecution alleged that the respondent had a strong motive to do away with Aladi Aruna as there were disputes between the respondent and the deceased Aladi Aruna. The respondent has Engineering Colleges at Tirunelveli and Nagercoil. In 2000, he started another Engineering College at Athiyuthu, Alangulam. The prosecution alleged that deceased Aladi Aruna had started another engineering college near to the college run by the respondent and on account of this, there were disputes between the respondent and Aladi Aruna. The respondent entered into a conspiracy with other accused and pursuant to that Aladi Aruna and Ponraj were killed on the date of the incident. During the course of investigation, the present respondent was implicated and was arrested on 30.1.2005.

The respondent filed a bail application before the District & Sessions Judge, Tirunelveli. The learned District & Sessions Judge dismissed the bail application on 31.1.2005. Thereafter, the respondent moved another bail application before the High Court by filing Criminal O.P. No. 1242 of 2005. The High Court dismissed that application on 8.2.2005. The Order passed by the High Court was challenged before this Court in S.L.P. (Crl.) No. 998 of 2005. Later on, the respondent

withdrew that SLP and moved the High Court by filing Criminal O.P. No. 2439 of 2005. The High Court dismissed that application on 4.3.2005. Again, he moved the High Court by filing O.P. No. 2862 of 2005, but withdrew that application on 21.3.2005. On 1.4.2005 again, he moved another application for bail by filing Criminal O.P. No. 3242/2005, which was dismissed by the learned Single Judge by an elaborate order. Learned Single Judge made certain observations in that order. It was observed that :

"While there is a confession statement recorded from one of the accused, the recovery of the part of the amount, which has been received by the hirelings from A-10, is also brought to the notice of the Court. In the instant case, this Court is able to see force in the contention of the learned Additional Public Prosecutor that in a case like this, if the Petitioner, who, according to the prosecution, is very influential, is bailed out, there is every possibility of tampering with the evidence. Under the circumstances, this Court is of the view that though the charge sheet is laid in the case, it is not a fit case for granting bail."

The respondent challenged that order in S.L.P. (Criminal) No. 2014 of 2005 and this Court dismissed the same on 18.4.2005.

Thereafter, the respondent again moved an application for bail before the High Court of Madras and by the impugned order, the learned Single Judge of the High Court granted bail to the respondent with certain conditions and that order is challenged before us.

We heard learned Counsel for the State and also Dr. Abhishek Manu Singhvi, learned senior Counsel on behalf of the respondent.

The learned Counsel for the State submitted that after this Court had dismissed the SLP filed by the respondent, the learned Single Judge of the Madras High Court should not have granted bail when there was no change of circumstances. Learned Single Judge in the impugned order had stated that the counsel for the petitioner has submitted that the co-accused has retracted his confession during the video conference with the concerned Magistrate. Although this fact was denied by the Government Advocate, the learned Judge relied on the statement made by the petitioner's Counsel and granted bail to the respondent. herein. In fact, there was no retracted confession as alleged by the present respondent before the learned Magistrate. It is true that one of the accused who had implicated the present respondent made an attempt to retract the confession. There was no confession recorded by the Magistrate under Section 164 of the Cr. P.C. and it seems that one of the accused had given some statement to the police during the course of the investigation. We are told that that witness had filed an application before the court that his statement should again be recorded by the police. We fail to understand why that accused is anxious to retract the statement made to the police officer which evidently cannot be used against him. The accused must have been trying to protect somebody by making contradictory statements before the police. In the impugned order, it is also mentioned that the respondent herein was suffering from some illness and he was a heart patient and needs effective treatment from an efficient doctor. All these facts must have been stated by the respondent in his previous applications. When there was no change of circumstances, the learned Judge may not have granted bail to the respondent. In the Order passed on 1.4.2005, the learned Single Judge had stated that the respondent herein was likely to influence the witnesses. That order was challenged before this Court and this Court declined to interfere with that order. Within a short period, the impugned Order was passed without adverting to any of the points dealt with by the learned Single Judge who declined to grant bail to the respondent.

When a learned Single Judge of the same Court had denied bail to the respondent for certain reasons and that order was unsuccessfully challenged before the appellate forum, without there being any major change of circumstances, another fresh application should not have been dealt with within a short span of time unless there were valid grounds giving rise to a tenable case for bail. Of course, the principles of res judicata are not applicable to bail applications, but the repeated filing of the bail applications without there being any change of circumstances would lead to bad precedents.

There are strong allegations against the respondent but we do not propose to advert to any of the evidence collected against him. Though the respondent's name was not mentioned in the FIR, it is alleged that he is one of the conspirators and he had a motive to do away with one of the deceased persons.

In the above circumstances, we allow this appeal, set aside the order passed by learned Single Judge and direct that respondent be taken into custody forthwith. We further direct that as the final report has already been filed in the case, and if the case already stands committed to the Sessions Court, the Sessions Judge may complete the trial as expeditiously as possible.