



Cr1.OP(MD)Nos.10401 of 2021, etc., batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

**Cr1.OP(MD)Nos.10401, 10437 to 10439, 10443 to 10446,
10451, 10453, 10455, 10456 and 10822 of 2021**

Cr1.OP.(MD)No.10401 of 2021:

1.Prabhu

2.Rajkumar

: Petitioners

Vs.

State rep. by
The Inspector of Police,
Madukkur Police Station,
Thanjavur District.

: Respondents

PRAYER: Petition filed under Section 439 of the Criminal Procedure Code seeking a direction to enlarge the petitioners on bail in Crime No.581 of 2021 on the file of the respondent police.

For Petitioners : Mr.A.Arunprasad

For Respondent : Mr.T.Senthilkumar
Government Advocate
(Cr1. Side)



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COMMON ORDER

An incident was alleged to be taken place on 14.07.2021, that a mob attacked and ransacked the respondent-Madukkur Police Station and caused damage to the station and took away an accused, namely, Senthil, who was in the police custody. In this regard, a case was registered in Crime No.581 of 2021 for the offence punishable under Sections 147, 452, 294(b), 186, 224, 225, 285, 353, 506(ii), 149, 109 IPC and Section 3(1) of the Public Property (Prevention of Damage & Loss) Act, 1992, as against 30 accused and unknown others. Later names of 19 accused were included in the CD file, totalling 49 accused in Crime No.581 of 2021.

2.The petitioners before this Court are either arrested by the respondent Police or are apprehending arrest at the hands of the respondent Police in connection with Crime No. 581 of 2021. Hence, they are before this Court seeking appropriate relief.



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3.Rajavarman @ Periyadurai [A4], Jawahar [A7], Muruganantham [A10], Velaventhana [A14], Nabil @ Naddarsha [A15], Prabu [A16], Arivalagan [A17] Kanmani [A18], Muruganantham [A19], Rajkumar [A20], Pannerselvam [A21], Rajangam [A22], Hariharan [A23], Ranjith [A25], Sathish @ Sathish kumar [A26], Kamaraj [A29], Vigneshwaran [A30], Ilango [A31], Kamaraj [A32], Yogesh [A33], Kannadasan [A34], Madhankumar [A35], Sathriyan [A36], Vinoth [A37] were already arrested by the respondent Police and they are seeking bail.

4.Vairavamoorthy [A2], Manikandan [A3], Rajkumar [A5], Veerakumar [A6], Veerasingam [A9], Suresh [A11], Raja @ Pettaraja @ Mannarmannan [A13], Kannan @ Ramakrishnan [A24], Rajendran [A28], R.J.Ananth @ Jeevanantham [A38] are apprehending arrest at the hands of the respondent police and they are seeking anticipatory bail.

5.Since all the petitions pertain to the case in Crime No.581 of 2021, all of them are heard together and are disposed of by way of this common order.



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6.The prosecution case is that one Senthil, Secretary of a political party, is an accused in a case in Crime No. 1485 of 2020 on the file of the Madukkur Police Station. In connection with the said case, the accused Senthil was apprehended on 14.07.2021 and was in the station. On the said date, around 03.15 pm, a mob led by the petitioners and others, formed an unlawful assembly, trespassed into the police station and challenged the police stating that why they kept the accused Senthil in the police station. It is their further case that the mob abused the police in filthy language and demanded the release of the said Senthil. On the instigation of the said Senthil, who is also arrayed as first accused in the present case, the petitioners and others damaged the properties and vehicles in the police station to the tune of Rs.5000/- and stage-managed to commit suicide by setting fire. They have also took the said Senthil from the custody of the police. Hence, the present complaint.

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7.Learned Counsel for the petitioners, *inter alia*, contended that the petitioners are innocents and the case has been foisted against them. Some of the petitioners took



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a plea that an agitation was conducted in a peaceful manner as against the unlawful arrest of Senthil, due to which, the present case was foisted against them. Some of the petitioners took a plea that they are no way connected with the occurrence and since they happen to be the relative of the accused-Senthil or the audience to the occurrence, they have been implicated as accused in this case.

8.The police station is a public place, where the citizens may come for lodging a complaint and therefore, a mere presence of a person in the police station at the time of occurrence itself would not make out a case as against that individual. As per the directions of this Court as well as the latest decision of the Hon'ble Supreme Court in ***Paramvir Singh Saini v. Baljit Singh and Others***, reported in ***AIR 2021 SC 64***, the installation of CCTV cameras in the police stations is mandatory. It appears that CCTV has been installed in the respondent police station, where the occurrence was taken place. Therefore, to ascertain the real offence / gravity of offence committed by the accused, this Court, when the matter was listed on 02.08.2021,



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directed the respondent police to place the photograph / videograph before this Court and adjourned the matter to 04.08.2021.

9. When the case was listed on 04.08.2021, the respondent police did not produce the same and at the request of the learned Government Advocate, the case was posted specifically at 04.00 pm on 06.08.2021. But, even on 06.08.2021, at 04.00 pm, the Government Advocate requested for short accommodation and therefore, the matter was taken up at 04.45 pm and then at 05.00 pm. But neither the investigation officer was present nor the photographs / videographs were produced before the Court. Therefore, this Court directed the learned Government Advocate to request the Deputy Superintendent of Police concerned to appear before the virtual hearing. He did not appear. Having waited for some time, this Court again directed the learned Government Advocate to request the Superintendent of Police concerned to appear before the virtual hearing. But he also did not appear and the learned Government Advocate expressed his helplessness.



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10. When this Court verified whether a proper communication has been given to the respondent police about the listing of this case on 06.08.2021 specifically at 04.00 pm, the learned Government Advocate submitted that a separate cell is functioning for each district and officers have been deputed by the respective Superintendents of Police as Liaison Officers. One Liaison Officer is allotted for each district to monitor the filing and listing of cases pertaining to the particular district. They are also to co-ordinate with the concerned stations and get instructions to the Law Officers. Apart from these liaison officers for each district, an Officer in the rank of an Inspector of Police is monitoring the Court proceedings on behalf of the Inspector General of Police and a separate wing with Inspectors, Sub-Inspectors and Constables is monitoring the cases for the Office of the Director General of Police. All these officers are having sufficient infrastructure to communicate about the listing of the cases to the concerned police station and therefore, there is no dispute with regard to the communication about the listing of case to the respondent police station.



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11.Despite the same, the Inspector of Police did not appear before the Court to assist the learned Government Advocate to place the real truth before the Court. When this Court suggested for the appearance of the Deputy Superintendent of Police and thereafter, the Superintendent of Police, through video conference, they also fail to appear. This attitude of the respondent police is shocking and it has to be deprecated. Until and otherwise the respondent police place the correct fact before the Court, it would be difficult for the Court to take a just decision. In view of this attitude of the respondent police, this Court left with no other option has called-for the CD file, gone through the same and reserved the matter for orders on 06.08.2021.

12.This is a case of serious in nature, a mob ransacking the entire police station and taking away an accused, who is in police custody. Even in such type of cases, neither proper instructions were given to the Law Officer nor the officials were present in the Court to assist the Law Officer. Unable to ascertain the truth, this Court was constrained to reserve the matter for orders.

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13. Section 21 IPC defines "public servant" as follows:

"...

iii) Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

iv) Every officer of a Court of Justice, whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorised by a Court of Justice to perform any of such duties;

...

viii) Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

xii) Every person

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;"



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14.By virtue of the aforesaid provisions, a Judge, a Government Advocate and the Police are all public servants. The conduct of the respondent police, being a public servant, in not responding either to the Government Advocate or to this Court, who are also public servants, has to be condemned and in this regard, this Court would like to remind them of the available penal provisions.

15.The petitioners are before this Court seeking bail and anticipatory bail, ie., the question of their personal liberty, which was guaranteed under Article 21 of the Constitution of India, is involved in these petitions.

16.As per Section 166 IPC, public servant knowingly disobeys any direction of the law with intent to cause injury to any person is liable to be prosecuted. By not responding to the Court and/or by not giving proper instructions, it *prima facie* appears that the respondent police attempted to cause injury to the personal liberty of the petitioners.



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17.The respondent police did not appear before the Court despite the directions of the Government Advocate, a public servant, for which, they can be prosecuted under Section 174 IPC [Non-attendance in obedience to an order from public servant].

18.For not giving instructions to the public servant, despite repeated communications, Section 179 IPC [Refusing to answer public servant authorised to question] can be invoked. For not assisting the Government Advocate and this Court, who are public servants, Section 187 IPC [Omission to assist public servant when bound by law to give assistance] can be invoked.

19.Despite the availability of photograph / videograph showing the mob attack, the same was not produced before the Court, for which, Section 175 IPC [Omission to produce document or electronic record to public servant by person, legally bound to produce it] can be invoked. Above all, Section 186 IPC [Obstructing public servant in discharge of public functions] can also be invoked against them.



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20.The investigation is the prerogative of the investigation agency. In fact, even the Courts are not interfering with the investigation. The sole object of the investigation is to find out the truth and to place it before the Court of law for necessary prosecution. The process of finding out the truth must be fair and impartial. The Courts can take a decision only on the materials placed by either side before it and therefore, it is the duty of all concerned to place the correct facts before the Court.

21.In fact, nowadays, most of the complaints are registered with exaggerated versions. This Court can take judicial notice of the fact that almost every complaint in the State are registered with the offence under Section 506(ii) IPC, making the case as non-bailable. This Court is seeing stereo-typed allegations which are made purposely to make out an offence as non-bailable and this culture is prevailing commonly. Likewise, the Public Properties (Prevention of Damage & Loss) Act is also invoked, as if the office is ransacked, house is ransacked, etc. On

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receipt of a complaint, the investigation officer commences the investigation by visiting the place of occurrence and preparing an observation mahazar and a rough sketch. At the time of visiting the place, if the investigation officer takes out a photograph / videograph on the nature of damage, it would be easy for the Courts to find out the actual damage caused in that particular case. Nowadays, every one is having a smart phone, which is having an in-built camera feature and therefore, this is not an impossible task. Without the help of the investigation agency, the real facts cannot be ascertained and a just decision cannot be made by the Courts.

22. When such a responsibility is cast upon the investigation agency, they should act accordingly. But if the agency itself acts in a careless and negligent manner, ultimately, it would cause a great injustice to the common citizen.

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23. Therefore, this Court, while deprecating the conduct shown by the respondent police, requests the top officials of the State Police machinery, namely, the Secretary to

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Government, Home Department, Secretariat, Chennai as well as the Director General of Police, Chennai to look into this episode and give necessary instructions to the officials.

24.After reserving the matter for orders on 06.08.2021, when a connected matter in CrI.OP(MD)No.10822 of 2021 came up for hearing on 09.08.2021, the respondent police produced photographs and videographs showing the agitations, which took place on the said date. Some of the photographs would disclose that some of the accused have raised slogans, attempted to commit suicide by pouring kerosene. At the same time, it appears that some persons, who are witnessing the occurrence, have also been implicated as accused.

25.An omnibus allegation has been made that a mob led by petitioners and others ransacked the police station and took away the first accused-Senthil, who was in custody. But, specific overt-act was not made as against any of the accused persons. It is not clear as to who raised slogans, who threatened the police, who caused damage to the

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properties, who took the first accused-Senthil from the custody of the police. Though it was alleged that the properties in the police station to the tune of Rs.5000/- was damaged, the materials used for causing such damage were not mentioned and not recovered. From the CD-file, this Court found a photograph showing a single window glass break and nothing more other than that. From the photographs and videographs produced, it appears that some of the accused have raised slogans, attempted to commit suicide by pouring kerosene.

26.The petitioners, who are seeking bail, are arrested between 15.07.2021 and 17.07.2021 and are inside the prison for the past twenty five days. Except the offence under Section 506(ii) IPC, all other offences are punishable with imprisonment less than seven years.

27.In view of the foregoing discussions and considering the facts and circumstances of the case, the period of incarceration in respect of the petitioners, who are already arrested, this Court is inclined to grant the relief sought for by the petitioners.

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28. Accordingly, the petitioners / Rajavarman @ Periyadurai [A4], Jawahar [A7], Muruganantham [A10], Velaventhana [A14], Nabil @ Naddarsha [A15], Prabu [A16], Arivalagan [A17] Kanmani [A18], Muruganantham [A19], Rajkumar [A20], Pannerselvam [A21], Rajangam [A22], Hariharan [A23], Ranjith [A25], Sathish @ Sathish kumar [A26], Kamaraj [A29], Vigneshwaran [A30], Ilango [A31], Kamaraj [A32], Yogesh [A33], Kannadasan [A34], Madhankumar [A35], Sathriyan [A36], Vinoth [A37], who were already arrested by the respondent Police, are ordered to be released on bail on their executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Pattukkottai and on further conditions that:

[a] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or bank pass book to ensure their identity.



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[b] the petitioners shall appear before the respondent police daily at 10.30 am., until further orders.

[c] the petitioners shall not tamper with the evidence or witness either during investigation or trial.

[d] the petitioners shall not abscond either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned 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]**.

[f] If the accused/petitioners thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

29. Similarly, the petitioners / Vairavamoorthy [A2], Manikandan [A3], Rajkumar [A5], Veerakumar [A6],



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Veerasingam [A9], Suresh [A11], Raja @ Pettaraja @ Mannarmannan [A13], Kannan @ Ramakrishnan [A24], Rajendran [A28], R.J.Ananth @ Jeevanantham [A38], who are apprehending arrest at the hands of the respondent police, are ordered to be released on bail in the event of arrest or their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate, Pattukottai, on condition that the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each with two sureties each for a like sum to the satisfaction of the learned Magistrate concerned and on further conditions that:

[a] the petitioners and the sureties shall affix their photographs and left thumb impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhaar card or bank pass book to ensure their identity;

[b] the petitioners shall report before the Jeyankondam Police Station daily at 10.30 am and at 05.30 pm, until further orders;



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[c] the petitioners shall not tamper with the evidence or witness either during investigation or trial;

[d] the petitioners shall not abscond either during investigation or trial;

[e] on breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned 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]** and;

[f] if the accused / petitioners thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

30.In the result,

i) CrI.OP(MD)Nos.10401, 10437 to 10439, 10443, 10446, 10451, 10455, 10456 and 10822 of 2021, are allowed in the above terms.



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ii) In view of the order passed in CrI.OP(MD)No.10401 of 2021, the petition in CrI.OP(MD)No.10453 of 2021 is liable to be dismissed, since both the petitions are filed by the very same petitioners. At this juncture, the learned Counsel for the petitioners sought permission to withdraw CrI.OP(MD)No.10453 of 2021. Permission is granted and the said petition is accordingly dismissed as withdrawn.

iii) In view of the order passed in CrI.OP(MD)No.10438 of 2021 granting bail to the petitioner therein [C.Rajangam-A22], the petition in CrI.OP(MD)No.10445 of 2021 is closed insofar as the fifth petitioner [C.Rajangam-A22] is concerned, since the petitioners are one and the same. Insofar as the rest of the petitioners in CrI.OP(MD)No.10445 of 2021 are concerned, they are granted the relief sought for, in the aforesaid terms. In fine, CrI.OP(MD)No.10445 of 2021 is partly allowed.

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To

- 1.The Judicial Magistrate,
Pattukottai.
- 2.The Inspector of Police,
Madukkur Police Station,
Thanjavur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Note:

Registry is also directed to mark a copy of this order
to

- i) The Secretary to Government,
Home Department,
State of Tamil Nadu,
Secretariat, Chennai.
- ii) The Director General of Police,
Dr.Radhakrishnan Salai,
Chennai.
- iii) The Inspector of Police,
Jeyankondam Police Station.

सत्यमेव जयते

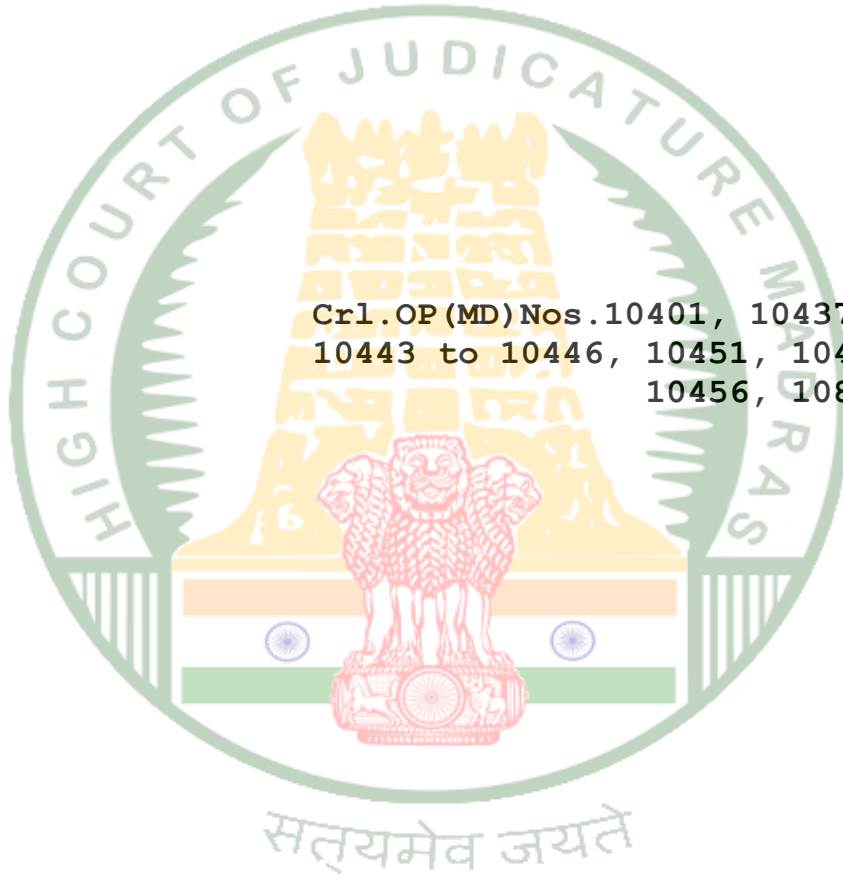
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