

Crl.O.P.Nos.7929 & 7930 of 2020 and Crl.A.No.234 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.05.2020
PRONOUNCED ON : 30.05.2020

CORAM

THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

Crl.O.P.No.7929 of 2020

and

Crl.O.P.No.7930 of 2020 and Crl.M.P.No.4009 of 2020

and

Crl.A.No.234 of 2020

Crl.O.P.No.7929 of 2020

R.S. Bharathi (M/A – 73 years),
S/o.D.J.Raman,
Member of Parliament
18, 29th Street, Thillai Ganga Nagar,
Nanganallur,
Chennai – 600061. ... Petitioner

Vs.

1.The Inspector of Police,
Central Crime Branch,
Commissioner Office Building,
EVK Sampath Road,
Vepery, Chennai – 600 007.

[Amended as per order of this Court
dated 30.05.2020 in Crl.M.P.No.4010
of 2020 in Crl.O.P.No.7929 of 2020.]

2.Kalyana Sundaram
Athithamilar Makkal Katchi,
No.1/8A, Managaratchi Kudiyiruppu,
Avaniyapuram, Madurai – 625012.

... Respondents

Crl.O.P.Nos.7929 & 7930 of 2020 and Crl.A.No.234 of 2020

Crl.O.P.No.7930 of 2020

The State Represented by,
Assistant Commissioner of Police,
Central Crime Branch,
Vepery, Chennai.
(Cr.No.214/2020)

... Petitioner

Vs.

R.S. Bharathi (M/A – 73 years),
S/o. D.J.Raman,
Member of Parliament
18, 29th Street, Thillai Ganga Nagar,
Nanganallur,
Chennai – 600061.

... Respondent

Crl.A.No.234 of 2020

Kalyana Sundaram (M/A - 58 years)
S/o. Late. Mr. Thirumeni
Aathi Thamilar Makkal Katchi,
No:1/8A, Managaratchi Kudiyiruppu,
Avaniyapuram,
Madurai-625012.

... Appellant

Vs.

1.Mr. R.S. Bharathi. (M/A-73 years)
S/o Mr. D.J.Raman,
Member of Parliament
18, 29" street, Thillai Ganga Nagar,
Nanganallur Chennai- 600 061.

2.The Assistant Commissioner of Police
CCB-I Police Station,
Chennai.

(Ref.Crime No.214 of 2020)

... Respondents

Crl.O.P.Nos.7929 & 7930 of 2020 and Crl.A.No.234 of 2020

Prayer in Crl.O.P.No.7929 of 2020: Criminal Original Petition filed under Section 482 of Cr.P.C praying, to direct the Principal Sessions Judge, Chennai to consider the Bail Application of the Petitioner on the same day after the Petitioner's surrender in Crime No. 119 of 2020 on the file of the Inspector of Police, E-3 Teynampet Police Station, Chennai.

Prayer in Crl.O.P.No.7930 of 2020: Criminal Original Petition filed under Section 482 of Cr.P.C praying, to set aside the part of the order passed by the learned Principal Sessions Judge in granting interim bail to the respondent in Crl.M.P.No.(Not Assigned) of 2020 dated 23.05.2020 pending disposal of the set aside petition.

Prayer in Crl.A.No.234 of 2020: Criminal Appeal filed under Section 382, 482 Cr.P.C r/w 14A of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 praying, to cancel the interim order (unnumbered) granting interim bail to the First Respondent/Accused dated 23rd May 2020 on the file of the Principal Sessions Judge, Chennai, herein in Crime No.214 of 2020 on the file of Assistant Commissioner of Police, CCB-I Police Station, Chennai.

Crl.O.P.No.7929 of 2020

For Petitioner : Mr.R.Shanmugasundaram,
Senior Counsel and
Mr.N.R.Elango, Senior Counsel
for Mr.E.Raj Thilak

For R1 : Mr.A.Natarajan
State Public Prosecutor
Assisted by
Mr.S.Karthikeyan
Additional Public Prosecutor

Crl.O.P.Nos.7929 & 7930 of 2020 and Crl.A.No.234 of 2020

For R2 : Mr.A.Ramesh, Senior Counsel
for Mr.G.R.Hari

Crl.O.P.No.7930 of 2020

For Petitioner : Mr.A.Natarajan
State Public Prosecutor
Assisted by
Mr.S.Karthikeyan
Additional Public Prosecutor

For Respondent : Mr.R.Shanmugasundaram,
Senior Counsel and
Mr.N.R.Elango, Senior Counsel
for Mr.E.Raj Thilak

Crl.A.No.234 of 2020

For Appellant : Mr.A.Ramesh, Senior Counsel
for Mr.G.R.Hari

For R1 : Mr.R.Shanmugasundaram,
Senior Counsel and
Mr.N.R.Elango, Senior Counsel
for Mr.E.Raj Thilak

For R2 : Mr.A.Natarajan
State Public Prosecutor
Assisted by
Mr.S.Karthikeyan
Additional Public Prosecutor

COMMON ORDER

The petitioner/accused in Crime No.119 of 2020 for offences under Section 3(1)(u) and 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as

Crl.O.P.Nos.7929 & 7930 of 2020 and Crl.A.No.234 of 2020

'Act') filed Crl.O.P.No.7929 of 2020 seeking direction to the learned Principle Sessions Judge, Chennai to consider the bail application of the petitioner on the same day after his surrender in Crime No.119 of 2020 on the file of the first respondent. Crl.M.P.No.4010/2020 is filed to amend the Crime number as 214 of 2020 in the cause title of Criminal original petition for the reason that the investigation of the case in Crime No.119 of 2020 has been transferred from the file of Inspector of Police, E3, Teynampet Police Station, Chennai – 600 018 to the file of Inspector of Police, Central Crime Branch, Commissioner Office Building, EVK Sampath Road, Vepery, Chennai-600 007 and renumbered as crime No.214 of 2020, which is allowed.

2.Crl.O.P.No.7930 of 2020 is filed against the order of the Principal Sessions Judge, Chennai in granting interim bail to the respondent in Crl.M.P.No. Unnumbered/2020 dated 23.05.2020 and also filed Crl.M.P.No.4009 of 2020 to stay the grant of interim bail.

3.In the above Criminal Original petition, the de-facto complainant/second respondent filed intervening petition, counter and rejoinder. The first respondent/State has filed common counter.

4.Criminal Appeal No.234 of 2020 is filed by the de-facto complainant to cancel the interim bail granted by the learned Principal Sessions Judge,Chennai counter is filed by the first respondent/petitioner in Crl.O.P.No.7929 of 2020.

5.Since the issues involved in all these Criminal Original Petitions are common and pertains to Crime No.214/2020, they are taken up together and disposed of by a common order.

6.The F.I.R. in this case came to be registered on 12.03.2020 by the Assistant Commissioner of Police, Teynampet, E3 Teynampet Police Station for the offences stated above. The informant in this case is the head of Athithamilar Makkal Katchi from 2016. He has been working to help the people who are from the downtrodden SC/ST and also to do the development in their Education and to strength their mutata by helping them improve their day to day life style. On 15.02.2020 an event viz., 'Kalaingar Vasagar Vattaram' was organised. In the said function Mr.R.S.Bharathi Member of Rajya Sabha and Mr.Dayanadhi Maran Member of Lok Sabha addressed the audience of more than 100 numbers, consisting of DMK party member, media and general public.

The accused belongs to DMK party and is well known leader and has made disrespectful remarks on members of oppressed class stating that the appointment of Hon'ble Justice A.Varadharajan, who belongs to lower caste and other 7 or 8 appointments of lower caste judges to High Court were alms rendered by former Chief Minister before the gathering of more than 100 people. The extract of the speech as well the recorded version of the same were filed along with the complaint. The speech disrespects the Hon'ble Justice A.Varadharajan who is held in high esteem by members of the schedule caste and scheduled tribe who is an inspiration to thousand of lawyers belonging to lower caste. This speech was made by the petitioner to bring publicity for his leader. According to the accused, the members belonging to the oppressed class are being appointed to such position not because of their merit but because of charity made by the political leaders and thus insulted and humiliated the S.C./S.T. People. This meeting was telecasted in most of the the Television and online channels. The statements are deeply disrespectful which attracts the offences under Section 3 (u) and 3(v) of the atrocities Act, 1989. On his complaint, the case came to be registered on 13.03.2020 at 6.00 P.M. Thereafter due to the Covid 19 pandemic no substantial investigation was conducted despite time limit prescribed

under S.C./S.T. Rules. Hence, the de-facto complainant filed Crl.O.P.No.7521/2020 before this Court and this Court by order dated 12.05.2020 directed the Investigating officer to complete the investigation and file charge sheet within a period of thirty days from the date of the order. In view of the order passed, the investigating officer who was constrained of time to complete the investigation expeditiously, as he was involved in the works relating to Covid 19, the Commissioner of Police, Greater Chennai Police by proceedings in C.NO.77/COP/Camp/2020 dated 22.05.2020 transferred the investigation to the Assistant Commissioner of Police, Central Crime Branch, Greater Chennai Police. The Assistant Commissioner of Police, Central Crime Branch on 22.05.2020 at about 18:30 hours took up the case for further investigation. The investigating officer perused case diary and documents collected in the case examined the previous Investigating Officer found prima facie commission of offence by the accused and in the course of investigation he intended to examine the accused at his residence, proceeded to examine the accused. Since, the accused did not co-operate, the investigating officer arrested the accused on 23.05.2020 at about 5.40 hours at his residence at Nanganallur for the purpose of investigation, for the reason, if the petitioner/accused is not arrested, he

would commit offence further and the members of the oppressed community resorting to more number of agitations leading to law and order problem cannot be ruled out. The accused was brought to the Central Crime Branch at about 6.20 hours on 23.05.2020. Thereafter, the petitioner was produced for remand before the Principal Sessions Judge/Special Judge who by order dated 23.05.2020 had granted interim bail to the petitioner till 31.05.2020 on the petitioner executing a personal bond for Rs. 10,000/- and directed the petitioner to surrender before the Court on 01.06.2020.

7.Crl.O.P.No.7929 of 2020 was filed by the petitioner on 18.05.2020 which was listed before this Court on 21.05.2020, the case, thereafter was adjourned to 27.05.2020 for serving notice to the de-facto complainant and for filing counter. This was before the arrest of the petitioner. Thereafter to serve notice on the de-facto complainant as per Section 15-A(5) of the Act and for the State Public Prosecutor to file his counter the case was adjourned to 27.05.2020. In the meanwhile the petitioner was arrested on 23.05.2020. Thereafter the petitioner/accused was produced for remand before the Principal Sessions Judge/Special Judge at his residence since the said date viz., 23.05.2020 happens to be

a Saturday/holiday. The Principal Sessions Judge/Special Judge after hearing arguments from both sides, granted interim bail as stated above.

8.The contention of the learned Senior Counsel for the petitioner is that the speech of the petitioner has to be looked into in its entirety and not in isolation by picking and choosing words and attributing motive to it is bad in law. Further submitted that there is no explanation given for the delay of one month in lodging the complaint. It is further contended that the petitioner's speech was not with any specific intention as mentioned in the complaint. The petitioner has not made any statement about the members of Scheduled Caste/Scheduled Tribe as a whole or in part. The petitioner sought to give credit to the Dravidian movement for the appointment of judges from among the members of the Scheduled Castes and more particularly to Thiru.M.Karunanidhi, in the case of late Justice A. Varadarajan. The petitioner's remarks were not intended to or in fact disrespect Justice A.Varadharajan or any other Hon'ble Judges.

9.Crl.O.P.No.7930 of 2020 and C.A.No.234 of 2020 are filed by the Assistant Commissioner of Police, Central Crime Branch, Chennai

and Kalyanasundaram informant in this case respectively to set aside and cancel the bail granted to the petitioner/accused vide order of the learned Sessions Judge dated 23.05.2020.

10.The contention of the Special Public Prosecutor is that the order passed by the lower court is contrary to law and the lower court ought to have seen the mandatory requirement of giving notice to the defacto complainant is not followed, while granting interim bail to the accused, the reason given by the lower court for not giving notice to the defacto complainant for the reason that he is at Madurai and the possibility of hearing him at present is remote possibility is not a valid reason. Further the pendency of the Crl.O.P.No.7929 of 2020 filed by the accused seeking direction to the learned principal Sessions Judge to consider his bail application on the same day of his surrender is no way relevant after accepting the remand of the accused. It is further submitted that after accepting the prayer for remand of the accused under S.C./S.T. Act, the prayer in the direction petition filed before the High Court become infructuous and therefore considering the pendency of the direction petition as one of the ground for granting interim bail to the respondent is not in accordance with the facts and circumstances of the

case. Further, the lower court erred in ordering interim bail to the accused without any bail application and after accepting the case of the prosecution as *prima facie* made out. The Lower Court ought to have remanded the accused instead of granting interim bail. The other reason given by the Lower Court for granting interim bail is that the son of the accused is a doctor in Government General Hospital treating patients exposed to virus and the accused was in self quarantine, in the absence of any material, the same is not acceptable. The Lower Court after having accepted the prayer for remand that *prima facie* case made out for remand, then the question of granting interim bail does not arise. Whether Section 439 Cr.P.C used are not, nothing is mentioned in the bail order. The interim bail or absolute bail, the accused is enjoying freedom. The word alms and benevolence are synonyms. The intention is the question now. The explanation given by the petitioner in using word “pitchai” in Tamil and in English “Mercy” is not acceptable. A *prima facie* case is made out and overtact is in conformity to the offence charged. Injustice has been done by the Court by not giving notice to the victim under Section 15-A of the Act. However, how big a person may be the law is above him, no person is above law. He further submitted that the case law referred by the petitioner is for under trial and convicts prisoners and

not for remand prisoners.

11.The State Public Prosecutor relied upon the following citations:

1.Ramdoss and Ors. Versus State of Tamil Nadu and Ors. reported in MANU/TN/0123/1992.

2.State through CBI Versus Dawood Ibrahim Kaskar and Ors. reported in MANU/SC/0643/1997.

3.Dinesh Dutt Joshi Versus the State of Rajasthan and Ors. reported in MANU/SC/0642/2001.

4.Manubhai Ratilal Patel Tr.Ushaben Versus State of Gujarat and Ors reported in MANU/SC/0800/2012.

5.Sundeep Kumar Bafna Versus State of Maharashtra and Ors. reported in MANU/SC/0239/2014.

12.The Senior Counsel Mr.A.Ramesh filed the appeal to cancel the interim bail has submitted that the order of the Lower Court is perverse, illegal, perverse and unjustified. The Court was swayed by extraneous circumstances while granting bail to the accused, even though the court found that a prima facie case was made out. The informant was not heard, violation of Section 15-A(5) had occurred. The only reason for granting interim bail is on the oral arguments that the accused was in

home quarantine and there is possibility of other inmates being infected by Covid -19. Further, when the accused had committed offence against the oppressed community such benevolence should not be shown and such an order passed is in clear derogation of the Statutory protection given to the victim. Further, there is no mention in the interim bail order about any bail application, filed and on copy of the bail application is furnished either to the complainant or to the public prosecutor.

13.The de-facto complainant had filed his counter and submitted that as per the act victim have the right of notice to the Court proceedings and placed reliance on the Section 15 A of the Act. Further, the de-facto complainant belongs to scheduled caste which was verified by the tahsildar and the community certificate was obtained. The victim comes under clause 24 of Article 336 of Constitution of India. Further the learned counsel for the de-facto complainant has submitted recorded speech of the petitioner and also extracted the incriminating portion of the speech in his complaint. The investigating officer verified the same, examined him and registered the case. Hence, it is proved that the accused has committed the offence against the society. It is further stated that the provisions of Section 438 of Cr.P.C., shall not apply to a

case under the S.C/S.T. Act, notwithstanding any judgment or order or direction of any Court. He would further submit that the accused is a influential person holding a senior post in the political party, the purpose of atrocities act is to provide various safeguards for the victim, protect them from the possible tyranny of the offenders. The learned counsel for the intervenor/defacto complainant further submitted that statutory provisions are not followed. In this case, *prima facie* case is made out, thereafter, the remand to be followed. The order of the lower Court is ex facie bad. He therefore prays for the dismissal of Crl.O.P.No.7929 of 2020.

14.He would further submit that the justice system should not be appear to be available to the high and mighty alone. When a serious offence had taken place against the oppressed community, when a public spirited person such as the petitioner voices against such injustice, order of interim bail is in clear derogation of the Statutory protection given to the victim.

15.He would further submitted that the order of the Principal Sessions Judge was influenced by the fact that the arrest was an abuse of

the powers vested in the hands of investigating agency. The discretion whether to arrest or not is the prerogative of the investigating agency. He placed reliance on the decision of the Hon'ble Supreme Court in the case of *M.C.Abraham and others vs. State of Maharashtra* reported in MANU/SC/1190/2002. He further placed reliance on the Judgment of the Hon'ble Supreme Court in the case of *State of Gujarat Vs. Salimbhai Abdulgaffar Shaikh* reported in (2003) 8 SCC 50 stating that the bail itself is not a final order. Hence the intervenor prays for dismissal of Crl.O.P.No.7929 of 2020. He would further submit that though E-Mail and the phone numbers are available no steps have been taken to serve the notice to him. He would further submit that as per Section 3 (u) and (v) of the Act consciously the word intention is not found. Hence, the petitioner/accused had not intention to hurt any particular community will not hold good.

16.It is further stated that this Court vide order dated 12.05.2020 in Crl.O.P.No.7521 of 2020 had directed the investigating officer to complete the investigation within a period of one month from the date of that order. As the investigating officer was involved in the work related to Covid-19. The Commissioner of Police, Greater Chennai

Police by proceedings in C.NO.77/COP/Camp/2020 dated 22.05.2020 transferred the investigation to the Assistant Commissioner of Police, Central Crime Branch, Greater Chennai Police. Thereafter, on receiving the case diary, materials, examining the previous investigating officer, the present investigating officer called on the accused for the purpose of investigation. As the accused failed to co-operate for investigation he arrested the accused and produced him for remand. In fine, the de-facto complainant as well as the State Public Prosecutor submitted that the order of trial Court granting interim bail to the accused is not sustainable both in law and on facts and hence, sought the interim bail granted to be cancelled.

17.In addition to the above submissions made, Mr.R.Shanmugasundaram, learned Senior Counsel for the petitioner/accused submitted that the Crl.O.P.No.7000 of 2020 is filed to quash the above case which is pending before this Court. He further submitted that the Hon'ble Supreme Court in the case of ***Sukhwant Singh Vs. State of Punjab*** reported in (2009) 7 SCC 559 has held that the Court has got the power to grant bail as well the interim bail. Therefore the learned Principal Sessions Judge, having been vested with

the power to grant interim bail in the present case has granted the same. It is further submitted that the Lower Court had exercised its discretionary powers while granting interim bail. In support of the same, he has also relied upon the Judgment in the case of *Amarawati and Another (Smt) V. State of U.P.* reported in **2005 Crl LJ 755**. He further relied upon the Judgment of the Hon'ble Supreme Court in the case of *Madhu Limaye and Ors. Vs. Sub-Divisional Magistrate, Monghyr and Ors.* reported in **(1970) 3 SCC 746**, wherein the Hon'ble Supreme Court held that pending the completion of the enquiry, an interim bond can be asked for if immediate measures are necessary.

18.The learned Senior Counsel placed reliance on the *Suo Motu* Writ Petition (C) No.1 of 2020 dated 23.03.2020 wherein the Hon'ble Supreme Court had directed the States to take appropriate measures for the decongestion and release of the prisoners on bail and also directed States to consider the granting of bail to “*Prisoners who have been convicted or are under trial for offences for which prescribed punishment is upto 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum*”. Taking into consideration the prevailing pandemic Covid-19 situation

and since the petitioner's son and wife are Doctors, son employed in Government General Hospital and exposed to COVID-19 patients. Due to this reason, the accused who is aged about 73 years in under self quarantine at home and the possibility of attack of COVID-19 is more for the persons of above sixty years, as seen from the guide lines of Ministry of Health and Family Welfare (P1) Department, Government of Tamil Nadu. Further the Ministry of Health and Family Welfare (P1) Department, Government of Tamil Nadu in its letter no. 1714/P1/2020-85 dated 16.04.2020 had issued a detailed notification wherein it is stated that the senior citizens above the age of 60 years face an increased risk of COVID-19 time. The learned senior counsel referred to the order passed of the learned Sessions Judge referring to learned senior counsels Mr.N.R.Elango and Mr.Wilson representing on behalf of the petitioner and presence of Special Public Prosecutor Mr.Sathya and State Public Prosecutor Mr.A.Natarajan, the learned Sessions Judge observed in his order about the son of the accused and his wife are doctors and his son is attending the ward duty at Government General hospital and the accused himself is in the home quarantine in view of the job of his family members. Considering the said fact and considering the pendency of the direction petition in Crl.O.P.No.7929 of 2020 before this Court the lower

Court granted interim bail. It is further submitted that the entire arrest process undertaken by the police shows clear malafide intention. The sequence of events that took place on 22.05.2020 and 23.05.2020 show that the entire act of arresting the petitioner/accused was politically motivated and against law. He further submitted that the FIR by the present investigating officer was registered on 22.05.2020 at 6.30 P.M. and the remand report of the petitioner shows that the petitioner was arrested in less than 12 hours from the time of registering the transferred FIR i.e, at 5.40 hours on 23.05.2020. Further, no notice under Section 41-A of the Cr.P.C. was served to the petitioner. The petitioner/accused is an advocate and he is the member of the parliament of Rajya Sabha and a respectable person in the society and he is a senior citizen. In Section 41-A, it is stated the police officers in all cases where the arrest of the person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing concern to appear before him or at such other place as may be specified in the notice. Admittedly, in this case no notice under Section 41-A was issued. The hasty manner of arrest of the accused, would go to show that it is motivated one. Further, the informant credentials and his claim that he is a victim are to be verified. The petition filed by the learned State Public prosecutor to set

aside the interim bail is not maintainable in view of the specific provisions of Section 14-A of the Act and prays for dismissal. He would further submit that the present appeal is against the interim bail and the interim bail is for limited purpose and not on merits. The appellant/defacto complainant is aware of the proceedings on 01.06.2020, he can make his objection then. Hence the Criminal Appeal No.234 of 2020 is liable to be dismissed.

19.The learned senior counsel further submitted that the accused has given complaints of corrupt practices, numbering around eight, against various ministers of Government of Tamil Nadu. Recently on 06.05.2020 to 11.05.2020 and complaints against the Chief Minister and Minister for Information and Technology for corruption in the tenders in the Department of Highways and Tamil Nadu Fibrenet Corporation respectively. On 22.05.2020 at about 16.00 hrs, a complaint against the Deputy Chief Minister for corrupt practices with regard to approval provided to the company run by his children and Government Guarantee given to another housing project was filed. Around 18.30 hours i.e. two hours after the filing of the complaint before the DVAC, the investigation of the above was transferred to the present investigating

officer and in less than twelve hours thereon, the investigating officer without prior notice or issue of summons, reached the residence of the petitioner before dawn and arrested him at 5.40 A.M. He further submitted that the petitioner is not fleeing away from the Court, he is to appear before the learned Sessions Judge on 01.06.2020 as per the interim bail order at that time, the public prosecutor and the de-facto complainant can make their objections during the hearing of regular bail. This Court consistently had been passing orders directing the Special Judge/Sessions Judge to consider the bail application under S.C/S.T. Act after affording due opportunity to the victim on the same day of surrender which is a regular feature and therefore there is no reason to deny such relief to the petitioner.

20.Mr.N.R.Elango, learned senior counsel in addition to the submission of the learned senior counsel Mr.R.Shanmugasundaram for the accused submitted that he was present at the time of remand and he had filed two petitions one for reject the remand and the other for bail, State Public Prosecutor as well as the Special Public Prosecutor for S.C./S.T. Cases were present and they were put on notice. The accused was examined in custody, statement recorded and all the materials are

available with the respondent and in public domain, hence the custodial interrogation is not required in this case and arguments were advanced by both sides. It is for the the State to send notice to the victim. Further, both the learned senior counsel for the petitioner and the Public Prosecutor admitted about the pendency of direction petition before this Court and the fact that the son and wife of the accused are Doctors and his son is in Government General Hospital, exposing to virus, considering these aspects, the interim bail order was passed. He therefore prays for the dismissal of the criminal appeal as well the petition to set aside the interim bail order.

22.This Court considered the submissions made by either side and perused the materials.

23.It is seen before the Lower Court on 23.05.2020, the accused was produced at 8.45 hours at the resident of the Judge, since it was Court Holiday. The learned Judge after hearing either side considering the overall facts and circumstances of the case granted interim bail to the petitioner. The reasons assigned by the learned Judge are clear and it is not a cryptic order and the order is a reasoned one with

necessary particulars. Considering the direction of the Apex Court in the prevailing situation of COVID 19 and considering the fact that the son and wife of the accused are doctors and his son is treating patients in Government General Hospital and the accused is in self quarantine, the lower Court granted interim bail to the petitioner/accused. The lower court discussed all the points and granted interim bail to the petitioner. Further, it is only interim bail and non hearing of the defacto complainant would not amount to violation of mandatory provisions of Section 15-A (5) of the Act. The petitioner/accused is to appear before the Sessions Judge on 01.06.2020. The defacto complainant is aware of the same make his objections then.

24.The learned State Public Prosecutor produced the circular of the Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment in Letter No.12017/02/2018-SCD (R.LCell) dated 15.03.2018 to the Chief Secretaries to all the State Governments/Union Territory Administration that the authorities empowered to issue Scheduled Caste certificates not to insert the word 'Harijan' in the Scheduled Caste certificate but to mention only the caste to which the person belongs and which has been recognized as

Scheduled Caste under the presidential orders. Thus the petitioner using the word 'Harijan' is a offence. The restriction in usage of word Harijan is for the purpose of issuance of community certificate the interpretations given by the State Public Prosecutor cannot be accepted.

25.Further, under the scheme of the Act, appeals are only to be filed under Section 14-A of the Act. Therefore the order challenged by the State Public Prosecutor under Section 482 Cr.P.C cannot be accepted. The High Court possesses the inherent powers to be exercised ex debito justitiae to do the real and substantial justice for the administration of which alone Courts exist. The power has to be exercised to prevent abuse of the process of the Court or to otherwise secure the ends of justice. But this power cannot be resorted to if there is a specific provision in the Act. There being a specific provision of appeal for such orders, the learned State Public Prosecutor taking recourse to Section 482 Cr.P.C in challenging the order of the trial Court cannot be entertained. The petitioner is 72 years old, the threat and fear is real. The spread of COVID-19 is raising in alarming phase throughout and the prison is no exception.

26.In view of the same, this Court does not find any infirmity or illegality in the order passed by the lower Court.

27.In the result, Crl.O.P.No.7929 of 2020 stands allowed and this Court directs the learned Principal Sessions Judge/Special Judge, Chennai to consider the bail application of the petitioner on the same day after his surrender in connection with Crime No.214 of 2020 and pass orders on merits and in accordance with law.

28.As far as Crl.O.P.No.7930 of 2020, in view of the specific provision under Section 14 -A of the Act for filing an appeal against the order of the Lower Court, Criminal Original Petition filed by the Public Prosecutor invoking Section 482 Cr.P.C against the order passed by the learned Principal Sessions Judge in granting interim bail to the respondent in Crl.M.P.No.(Not Assigned) of 2020 dated 23.05.2020 is without jurisdiction, as per the Act only appeal against the order of the lower court are to be filed. Hence, Crl.O.P.No.7930 of 2020 is dismissed. This Court finds no illegality or perversity in the order of the lower Court both on facts and law. Criminal Appeal No.234/2020 stands dismissed.

29.It is made clear that the observations and finding made herein are only for the purpose of disposal of the petitions. The lower Court uninfluenced by this order is directed to proceed with the bail petition and decide the same on its own merits. Consequently, the connected miscellaneous petition is closed.

30.05.2020

Internet : Yes

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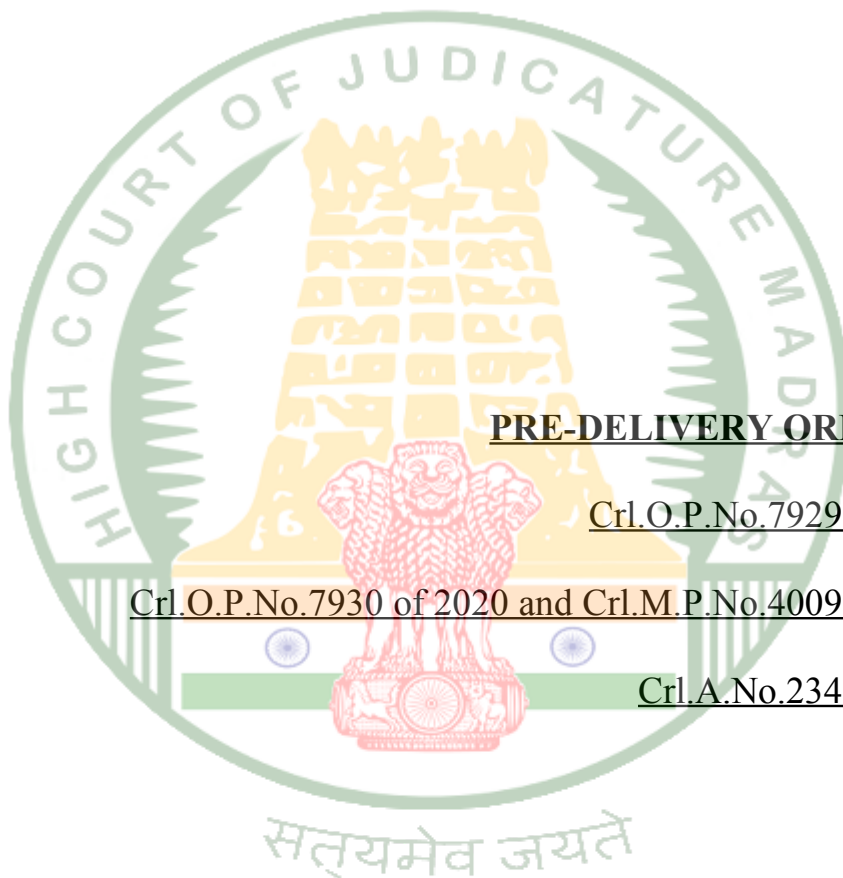
To

- 1.The Principal Sessions Judge,
Chennai.
- 2.The Assistant Commissioner of Police
CCB-I Police Station,
Chennai.
- 3.The Inspector of Police,
Central Crime Branch,
Commissioner Office Building,
EVK Sampath Road,
Vepery, Chennai – 600 007.
- 4.The Public Prosecutor,
High Court, Madras.

Crl.O.P.Nos.7929 & 7930 of 2020 and Crl.A.No.234 of 2020

M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN

Crl.O.P.No.7929 of 2020
and
Crl.O.P.No.7930 of 2020 and Crl.M.P.No.4009 of 2020
and
Crl.A.No.234 of 2020

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