

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.12.2015

Coram

The Honourable Mr.Justice B.RAJENDRAN

Criminal Original Petition No. 27045 of 2015

V.Suganya

... Petitioner

vs.

1. The State rep. by
Inspector of Police
All Women Police Station
Uthukkottai.
(Cr.No.6 of 2015)

2. Srinivasan

... Respondents

Prayer: Criminal Original Petition filed under Section 439(2) of Cr.P.C. to cancel the bail order granted in favour of 2nd respondent by the learned Principal District and Sessions Judge, Tiruvallur, in CrI.M.P.No. 3012 of 2015, dated 13.10.2015, F.I.R.No.6 of 2015, dated 06.10.2015.

For Petitioner : Mr.T.S.Rajamohan

For Respondents : Mr.M.Mohamed Riyaz
Government Advocate
(Criminal Side) for R.1

O R D E R

The 2nd respondent is arrayed as accused No.2 in Cr.No. 6 of 2015 on the file of All Women Police Station, Uthukkottai, for the alleged offences under Sections 417, 376 and 506 (i) IPC. The 2nd respondent was arrested by the 1st respondent police on 06.10.2015. The learned Principal District and Sessions Judge, Tiruvallur, granted bail to the 2nd respondent by order dated 13.10.2015 in CrI.M.P.No. 3012 of 2015. Seeking to cancel the same, the petitioner, who is the defacto complainant, has come up with this petition.

2. Mr.T.S.Rajamohan, the learned counsel appearing for the petitioner/defacto complainant would submit that the 2nd respondent, who is arrayed as accused No.2 is the father of accused No.1 and it is accused No.1, who allegedly had sexual intercourse with the petitioner/defacto complainant, as a result of which, she became pregnant and later, he refused to marry her, at the instigation of accused No.2. He would further submit that the petitioner was made to

abort by accused No.2, who is the father of accused No.1, by taking her to the hospital, by promising that he will make arrangement for the marriage between the petitioner and accused No.1. But, after abortion, it is accused No.2, who has conveniently left her out and though, this vital fact was known to the prosecution, the prosecution did not bring to the notice of the Lower Court, therefore, the Lower Court has not considered the vital aspect that the 2nd respondent/accused No.2 is the person, who instigated for the abortion by promising that he will make arrangement for the marriage between the petitioner and the accused No.1, and granted bail and hence, the petitioner has filed this petition seeking to cancel the bail granted to the 2nd respondent/accused No.2.

3. Mr.M.Mohamed Riyaz, learned Government Advocate [Criminal Side] would point out that even at the time of admission, in the Lower Court, the defacto complainant/Intervener has entered appearance through an Advocate and she has filed an affidavit, wherein, she has clearly averred as follows:-

"3. The accused A1 promised to marry me and forcefully made me pregnant then all the accused compelled me come to Redhills and illegally forced me to for abortion with sweet goated words that they would marry me to A1 later on Hence 3 months totes was aborted without my full consent.

4. They promised me that they make arrangement for the marriage with accused A1. The A2 Srinivasan father of A1 who was executed in stamp paper stating that he would make arrangement for my marriage with A1. Hence that only I accepted for the aborted my 3 months totes..."

The learned Government Advocate would submit that from the above, it is evident that accused No.2 had executed in a stamp paper stating that he would make arrangement for marriage with accused No.1, therefore, she accepted for the abortion and the abortion was done only with her consent. The learned Government Advocate would further bring to the notice of this Court that the Lower Court, in its order dated 13.10.2015, has observed as follows:-

"According to the prosecution one Kanishka (A.1) son of the petitioner and the defacto complainant were in love. As a consequence, the defacto complainant became pregnant. When the defacto complainant insisted A.1 for marriage, under the false promise she was taken to Doctor and aborted for which this petitioner, who is the father of 1st accused, the mother of A1, and unmarried sister of A.1 were all arrayed as accused. The defacto complainant has also intervened in this bail petition and filed an affidavit through a counsel,

saying that she was made to believe by the petitioner that he will arrange for his son's marriage with her. But contra to that, she was taken to a Doctor at Redhills and aborted the fetus.

The perusal of the affidavit filed by the defacto complainant clearly indicates that she had sexual relationship with A.1 with consent and the petitioner who is the father of A.1 is nothing to do with the affair. The defacto complainant herself has given an undertaking to the petitioner that she will not have any corneal relationship with his son of the petitioner till marriage is solemnised.

Taking note of the complaint and documents relied by the intervener this Court feels that the role of A.2, the petitioner herein is very insignificant in this case and he is entitled for bail."

Pointing out to the same, the learned Government Advocate would submit that, if at all, it can only be stated that accused No.1 only gave a false promise, but, even in the affidavit, she never stated that it was accused No.2, who took her to the hospital and therefore, the connivance of accused No.2 with accused No.1 cannot be guessed at this point of time, especially, when the Lower Court has passed an order after hearing the defacto complainant through her counsel, therefore, the present petition at this stage is not at all maintainable and hence, he would pray for the dismissal of the petition seeking for cancellation of bail. He would further contend that the 2nd respondent/accused No.2 is regularly complying with the conditions imposed by this Court, while granting bail in Crl.M.P.No.3012 of 2015, dated 13.10.2015.

4. I have heard the learned counsel for the petitioner and the learned Government Advocate appearing for the 1st respondent. By consent, this matter is taken up and disposed of at the stage of admission itself.

5. From the entire materials available on record as well as a perusal of the order of the Lower Court, it is crystal clear that in the Lower Court, the defacto complainant was duly represented by an Advocate and even the defacto complainant herself had filed an affidavit into the Court below and from a reading of which, it is clear that she consented both for the sexual intercourse as well as for the abortion. Of course, for the abortion, she would contend that accused No.2 gave a false promise that he would arrange for the marriage between the petitioner and accused No.1. But, that is the case, now pending. Merely because, the Lower Court has granted bail, can, it be now cancelled only on the ground that 2nd respondent/accused No.2 has not kept up his promise and he has not arranged for the marriage of the petitioner with accused No.1. Definitely not, is my

answer. It is not the case of the petitioner/defacto complainant that 2nd respondent/ accused No.2 has violated any of the conditions imposed by this Court, while granting bail or he is doing any further illegal acts. Further more, accused No.2 is a senior citizen, aged 53 years. He is only the father of accused No.1 and his release on bail, in my considered opinion, will not in any way hamper the trial of the case. Further, when there is no allegation of the 2nd respondent/accused No.2 misusing the bail conditions, I am not inclined to cancel the bail granted to the 2nd respondent/accused No.2. Hence, the order passed by the learned Principal District and Sessions Judge, Tiruvallur, in CrI.M.P.No. 3012 of 2015, dated 13.10.2015, stands confirmed. The Criminal Original Petition is, therefore, dismissed.

paa

Sd/-
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

1. The Inspector of Police
All Women Police Station
Uthukkottai.
2. The Principal District and Sessions Judge
Tiruvallur.
3. The Public Prosecutor,
High Court, Madras

+1 C.C. To MR.T.S.Rajamohan, Advocate in SR.NO.66534

CrI.O.P.No.27045 of 2015

RSY(CO)
sd : 29/12/2015

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