



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Twentieth day of June Two Thousand Sixteen

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PRESENT

The Hon`ble Dr.Justice P.DEVADASS

CRL MP(MD) No.4468 of 2016

IN

CRL A(MD) No.198 of 2016

1 ANBARASU @ STANLEY JONES ANBARASU @ STANLEY DAVID ANBARASU
2 ASIR DAVID
3 KASTHURI ... PETITIONERS

Vs

THE STATE REP. BY
THE INSPECTOR OF POLICE
VADASERY POLICE STATION,
NAGERCOIL, KANYAKUMARI DISTRICT.
CR.NO.204/2000

... RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to Suspend the sentence imposed by the Judgement dated 27.5.2016 made in S.C. No.194 of 2002 on the file of Mahila Fast Track Court Nagercoil and enlarge the petitioners on bail pending disposal of the above appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.M.Ajmal Khan, Senior Counsel for M/S AJMAL ASSOCIATES, Advocate for the petitioner and of Mr.P.Kandasamy, Government Advovcate (Crl.Side) for the Respondent and the court made the following order:-

A1 and A3 in S.C.No.194 of 2002, on the file of the learned Sessions Judge, Fast Track Mahila Court, Nagercoil, while challenging their conviction and sentence, seek appeal bail under Section 389(1) Cr.P.C.

2. In the said Court, they were convicted and sentenced as detailed below:

- (i) Each A1 to A3 were found guilty under Section 498-A I.P.C., sentenced to 3 years R.I., and each fined Rs.5,000/-, i/d 4 months R.I.

<https://hcservices.ecourts.gov.in/hcservices/>

- (ii) A1 was found guilty under Section 304-B I.P.C., sentenced to 10 years R.I., and fined Rs.25,000/-,



i/d 9 months R.I.

(iii) Each A2 and A3 were found guilty under Section 304-B r/w 114 I.P.C., and sentenced to 10 years R.I., and each fined Rs.25,000/-, i/d 9 months R.I.

(iv) Each A1 to A3 were found guilty under Section 4 of D.P.Act and sentenced to 2 years S.I., and each fined Rs.5,000/-, i/d 3 months S.I.

3. All the sentences were directed to run concurrently. Fine amounts were paid. Now, A1 and A2 are lodged in Central Jail, Palayamkottai and A3 is lodged in Special Prison for Women, Trichy.

4. The 1st petitioner / A1 married the daughter of P.Ws.1 and 2 on 26.01.1994. The couples were blessed with a child. On 04.02.2000, she committed suicide by self-immolation. She also set fire to her infant child. Both mother and child passed away. In this connection, the petitioners / A1 to A3 were prosecuted for offences under Sections 498-A, 304-B r/w 114 I.P.C., and Sections 3 and 4 of D.P.Act. They were convicted and sentenced as stated above.

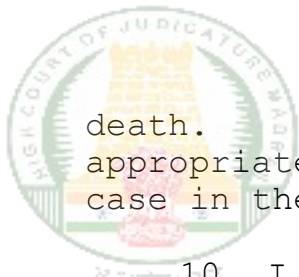
5. The learned senior counsel for the petitioners would submit that absolutely there is no material to sustain the charges framed as against the petitioners. P.Ws.1 to 3, who have lost the deceased, have stated that dowry has been demanded by the petitioners. But, they did not state it before P.W.25 / R.D.O., who conducted the inquest. P.Ws.1 to 3 had made improvement during their evidence. P.W.5 / landlord's evidence contradicts the evidence of P.Ws.1 to 3.

6. The learned senior counsel for the petitioners further contended that Ex.P1 to P3, letters stated to have been written by the deceased, does not speak about dowry demand from the accused, except there were some misunderstanding between the spouses.

7. The learned senior counsel for the petitioners further contended that P.W.25, after recording the statement of material witnesses, concluded that her death is linked with some misunderstanding with her family and there is no basis to conclude that she died of any dowry torture. Thus, the prosecution has thoroughly failed to establish the charges levelled against the petitioners beyond all reasonable doubts. There is a prima facie case in their favour.

8. Prosecution filed counter.

9. The learned Government Advocate (Criminal Side) submitted that there are incriminating materials from the mouth of P.Ws.1 to 3. Their evidence is to the effect that the accused have harassed the deceased demanding dowry. Under such circumstances, she committed suicide within 7 years of her marriage. It is dowry



death. Thus, the Trial Court has rightly convicted and appropriately sentenced the petitioners. There is no prima facie case in their favour.

10. I have anxiously considered the rival submissions, perused the impugned Judgment and the relevant materials on record.

11. For an offence under Section 304-B I.P.C., apart from suicide taking place within 7 years of marriage, it must be shown that 'soon before her death, the deceased has been subjected to dowry torture'. Only upon such proof, the presumption of dowry death would arise.

12. P.W.5 / landlord, does not speak about any dowry demand. Mainly ipse dixit of P.Ws.1 to 3 has been acted upon by the Trial Court. Exs.P1 to P3, letters stated to have been written by the deceased to her parents, speak about her misunderstanding in the family. Nowhere, she has stated that the petitioners have demanded dowry.

13. P.W.25 / R.D.O., conducted enquiry. His inquest is intended to find out apparent cause of death. He has examined the material witnesses and recorded their statement. He has ruled out any dowry demand. It has been pointed out by the petitioners' side that before P.W.25 the witnesses have not stated any dowry demand. The statement given before P.W.25 is a 'previous statement' like a statement recorded under Section 161 Cr.P.C. Such statement can be used by the defence and it cannot be used by the prosecution. The statements given before P.W.25 is prior to recording of substantial evidence by the learned Trial Judge. The absence of incriminating information, namely, torturing the woman for dowry before her death is an important aspect.

14. In the facts and circumstances, I find certain eminently arguable points are involved in this criminal appeal. They are required to be examined in the main criminal appeal. Further, it will take sometime for the disposal of the criminal appeal. In the circumstances, I find prima facie case in favour of the petitioners. Thus, I am inclined to grant them appeal bail.

15. Ordered as under:

- (i) Appeal bail granted to the petitioners.
- (ii) Their Sentence of imprisonment imposed alone is suspended.
- (iii) There shall be two sureties for each petitioner, they and each petitioner shall execute a bond for Rs.20,000/- (Rupees twenty thousand only) each to the satisfaction of the learned Judicial Magistrate No.II, Nagercoil.
- (iv) 1st petitioner / A1 shall appear before the said Court on the first working day of every month at 10.30 a.m., until further orders.



(v) Petitioners 2 and 3 / A2 and A3 shall appear as and when so ordered by the Court.

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sd/-
20/06/2016

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE JUDICIAL MAGISTRATE NO.II, NAGERCOIL
- 2 DO THRO' THE CHIEF JUDICIAL MAGISTRATE,
KANYAKUMARI DISTRICT AT NAGERCOIL.
- 3 THE ADDITIONAL SESSIONS JUDGE,
FAST TRACK MAHILA COURT, NAGERCOIL.
- 4 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.
- 5 THE SUPERINTENDENT,
SPECIAL PRISON FOR WOMEN, TRICHY.
- 6 THE INSPECTOR OF POLICE
VADASERY POLICE STATION, NAGERCOIL,
KANYAKUMARI DISTRICT. CR.NO.204/2000
- 7 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S AJMAL ASSOCIATES Advocate SR.No.31476

krk

JM/GSV-PM/SAR-III/21.06.2016/4P-9C

ORDER
IN
CRL MP (MD) No.4468 of 2016
IN
CRL A (MD) No.198 of 2016
Date :20/06/2016