



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.A(MD)No.437 of 2017

Kannan @ Suresh Kannan

... Appellant

Vs.

State,
The Deputy Superintendent of Police,
OCU, CBCID, Tirunelveli City,
Thoothukudi CBCIS Police Station.

... Respondent

Prayer: Criminal Appeal filed under Section 14 A (2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 as amended by Act 1/2016, to call for the entire records relating to the order dated 26.05.2017 in Cr.M.P.No.1797 of 2017 passed by the learned II Additional Sessions Judge, Tirunelveli and to set aside the same as arbitrary and consequently, to release the appellant on bail in connection with the case in Crime No.2 of 2015 on the file of the respondent Police.

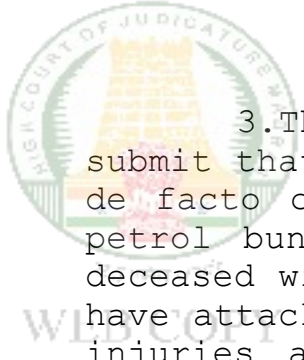
For Appellant : Mr.S.G.L.Rishwanth

For Respondent : Mr.T.Mohan,
Additional Public Prosecutor(Crl. Side)

JUDGEMENT

This Criminal Appeal has been filed praying to set aside the order dated 26.05.2017 in Cr.M.P.No.1797 of 2017 passed by the learned II Additional Sessions Judge, Tirunelveli and consequently, to release the appellant on bail in Crime No.2 of 2015 on the file of the respondent Police.

2.The appellant, who was arrested and remanded to judicial custody on 30.11.2016 for the offences punishable under Sections 147, 148, 109, 120(B), 302 IPC r/w 149 IPC and sections 25(1-B) (a) of Arms Act r/w Section 3(2)(v) of Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 r/w 149 IPC in Crime No.2 of 2015 on the file of the respondent police, seeks
appeal bail.



3.The learned counsel appearing for the appellant would submit that as per the FIR, the father of the deceased, who is the de facto complainant, has witnessed the occurrence occurred at a petrol bunk and the first accused is said to have attacked the deceased with aruval on his neck and the second accused is said to have attacked the deceased with aruval on the back head and caused injuries and the name of the appellant was not mentioned. He would also submit that the case is transferred for investigation to CBCID and thereafter, there are some mentioned in respect of the overt act of the accused in this case. He would further submit that the appellant was acquitted in respect of the cases in Crime Nos.174 of 2011 and 220 of 2013 for the offence under Section 307 IPC.

4.The learned Additional Public Prosecutor appearing for the respondent, on instructions, would submit that initially FIR was registered as against 2 named and 2 unnamed persons and during investigation, totally 10 persons were arrayed as accused and the appellant is arrayed as A6 in this case. He would also submit that the appellant is implicated as accused in this case based on the confession of the co-accused and as per the confession of the co-accused, the specific overt act attributed against the appellant is that he is the first person, who chased the deceased, made the first cut on the neck of the deceased and the appellant was arrested and remanded to judicial custody on 30.11.2016. He would further submit that the remaining accused were arrested and enlarged on bail and as per the counter statement, the appellant is having 14 previous cases and hence, if the appellant is enlarged on bail, certainly he will abscond from the clutches of law. He would submit that the earlier bail appeal in CrI.A.(MD) No.314 of 2017 was dismissed by this Court on 17.08.2017.

5.A report dated 08.11.2017 from the learned Judicial Magistrate No.I, Kovilpatti, stating that the case was committed to the Sessions Court and due to amendment in the SC and ST Act, which is not applicable to the present case while considering the date of occurrence, the records were sent back by the II Additional District Judge (PCR Court), Tirunelveli. Now the case is taken on file in P.R.C.No.20 of 2017 pending before the Judicial Magistrate No.I, Kovilpatti for committal and due to pendency of non bailable warrant against A4, the case is yet to be committed to the concerned Sessions Court.

6.Considering the facts and circumstances of the case and also considering the fact that remaining accused were enlarged on bail and the appellant was arrested and he is in custody from 30.11.2016 onwards and he was implicated in this case based on the confession of the co-accused and the de facto complainant has not ~~submitted any evidence~~ about the overt act of the appellant in his complaint, this Court is inclined to allow the Criminal Appeal by setting aside the order, dated 26.05.2017 in Cr.M.P.No.1797 of



2017 passed by the learned II Additional Sessions Judge, Tirunelveli.

7. Accordingly, the Criminal Appeal is allowed and the dated 26.05.2017 in Cr.M.P.No.1797 of 2017 passed by the learned II Additional Sessions Judge, Tirunelveli is set aside. The appellant is ordered to be released on bail on his each executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) with two sureties, each for a like sum to the satisfaction of the learned II Additional Sessions Judge, Tirunelveli, and on further condition that:

[a] the appellant shall report before the concerned Court, daily at 10.30 a.m., until further orders.

[b] the appellant shall not tamper with evidence or witness either during investigation or trial.

[c] the appellant shall not abscond either during investigation or trial.

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

sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The II Additional Sessions Judge, Tirunelveli
2. The Deputy Superintendent of Police,
OCU, CBCID, Tirunelveli City,
Thoothukudi CBCIS Police Station.
3. The Superintendent Central Prison,
Palayamkottai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.G.L.Rishwanth, Advocate Sr.No.87150

NBJ

VB/SV/MMS/SAR1/24/11/2017/3P/6C

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