

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.38 of 2018

Moorthy @ Dhakshnamoorthy
S/o.Settu

... Appellant/Accused

Vs.

State by: Inspector of Police,
All Women Police Station (Salem Town),
Salem District (Cr.No.10/2017) ... Respondent/complainant

Prayer: Criminal Appeal filed under Section 14(A) of the SC/ST (Prevention of Atrocities) Amendment Act, 2015, against the order passed on him by the Sessions Judge, Mahila Court at Salem in Crl.M.P.No.6 of 2018, dated 05.01.2018.

For Appellant : Mr.R.Asaitambi
For Respondent : Mrs.T.P.Savitha
Government Advocate (Crl.Side)

JUDGMENT

The accused in Crime No.10 of 2017 in S.C.No.71 of 2017 is the appellant in this appeal, challenging the order of dismissal of the bail application filed by the appellant under Section 439 of Cr.P.C. in Crl.M.P.No.6 of 2018 dated 05.01.2018.

2.The case of the prosecution is that a complaint has been given by the de-facto complainant one Payavee, the mother of the victim girl alleging that on 04.10.2017 at about 10.00 p.m., the petitioner has kidnapped the minor girl, namely Bhuvaneshwari by way of given false assurance that he would marry the victim girl Bhuvaneshwari and misbehaved with her. Later on the accused and the victim girl Bhuvaneshwari were secured by the police on the same day and there was no harm done to the victim girl by the accused.

3.Based on the above occurrence, the respondent police has registered a case in Crime No.10 of 2017 for the offences under Sections 363, 366(A) r/w 5(ii) of POSCO Act r/w 3II(v) r/w 3(1) W of SC/ST (POA) Amendment Ordinance 2015 on 06.10.2017.

4.Based on the above registration of the complaint, the petitioner was arrested on 06.10.2017 and from that day onwards

he is in judicial custody. Based on the registration of the complaint in Crime No.10 of 2017, the respondent police investigated and filed a charge sheet which was taken on file by the learned Sessions Judge, Mahila Court, Salem in S.C.No.71 of 2017 and the same is pending before the said Court.

5.In the said circumstances, the appellant has filed bail application under Section 439 of Cr.P.C. before the learned Sessions Judge, Mahila Court, Salem for bail. In the petition, the petitioner states that both the complainant and the victim girl were loved each other, but a false case was given against this petitioner alleging that the petitioner has kidnapped the victim girl viz., Bhuvaneswari, aged about 13 years for false assurance that he would marry her and later on he was arrested on 06.10.2017. Therefore, he prayed the trial Court to release the petitioner on bail, since the petitioner was arrested on 06.10.2017 and in this case, the entire investigation was completed and charge sheet also filed, which was taken on file by the learned Sessions Judge, Mahila Court, Salem in S.C.No.71 of 2017.

6.For the bail petition, the respondent police appeared and the learned Additional Public Prosecutor raised objection strongly for granting bail to the petitioner, on the ground that the petitioner has committed penetrative sexual assault against the victim girl Bhuvaneswari, who is aged about 13 years, who belongs to Scheduled Caste and left her by stating that she belongs to Scheduled Caste Community and the victim girl studying 7th standard. The offence committed by the accused is a grave in nature.

7.Considering both side submissions, the learned Sessions Judge, Mahila Court, Salem, has dismissed the application on 05.01.2018 by stating that the petitioner accused has committed penetrative sexual assault against the victim girl aged about 13 years, who is studying 7th standard and accused and the victim girl belongs to different community and that the victim girl and the accused are lovers. Now, the respondent police filed charge sheet and the case is taken on file and hence, the trial Court is not inclined to grant bail until examination of the victim girl. Challenging the said order, this appeal has been filed by the appellant/ accused.

8.I heard Mr.R.Asaitambi, learned counsel for the petitioner and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and perused the records.

9.It is the case of the petitioner that the appellant/accused and the victim girl are loved each other since the victim girl is major.

10.Admittedly, though the alleged kidnapped was taken place on 04.10.2017, but the complaint was given on 05.10.2017 and the case was registered on 06.10.2017 and this petitioner was arrested on 06.10.2017 in Crime No.10 of 2017 for the alleged offences under Sections Sections 363, 366(A) r/w 5(ii) of POSCO Act r/w 3II(v) r/w 3(1) W of SC/ST (POA) Amendment Ordinance 2015, and from that day onwards the petitioner is in jail for the past 4 months and above.

11.Admittedly, the entire investigation in this case was completed and charge sheet was also filed by the respondent police before the learned Sessions Judge, Mahila Court, Salem and the same was taken on file in S.C.No.71 of 2017. Therefore, it is made clear that tampering of witnesses and documents to be made by the appellant/ accused does not arose in this case, since the charge sheet has already been laid in S.C.No.71 of 2017. Since the Appellant/accused in judicial custody from 06.10.2010 and the Court cannot keep the accused in custody indefinitely. In this circumstances, I am inclined to grant bail to the appellant/accused.

12.In the result:

(a) the Appeal is allowed by setting aside the order passed in CrI.M.P.No.6 of 2018, dated 05.01.2018, on the file of the learned Sessions Judge, Mahila Court, Salem;

(b) the appellant is ordered to be released on bail, on condition that the appellant shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties out of whom, one shall be blood related surety, each for a like sum to the satisfaction of the learned Sessions Court, Mahila Court, Salem;

(c) the appellant and 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;

(d) the appellant shall appear before the learned Sessions Court, Mahila Court, Salem, daily at 10.30 a.m. until further orders and also directed to appear all the hearings in the Sessions Case in S.C.No.71 of 2017, without fail;

(e) the appellant shall not tamper with evidence or witnesses during the trial.

(f) the appellant shall not abscond during the trial.

(g) On breach of any of the aforesaid conditions, the learned Sessions Court, Mahila Court, Salem/Trial Court is entitled to take appropriate action against the appellant in accordance with law as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

(h) If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Judge,
Mahila Court, at Salem.

2. Inspector of Police,
All Women Police Station (Salem Town),
Salem District

3. The Superintendent, SubJail, Rasipuram

4. The Public Prosecutor
High Court, Madras.

+1cc to Mr.R.Asaithambi, Advocate Sr.No.3961

sm:27.2.2018

सत्यमेव जयते

Judgment made in
Crl.A.No.38 of 2018

WEB COPY