

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.02.2018

PRONOUNCED ON : 12.11.2018

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Crl.A.No.46 of 2018

Subramani

..Appellant/Petitioner/Accused

Vs.

State rep. by

The Inspector of Police,

All Women Police Station Tiruppur,

In Crime No.10 of 2017

Tiruppur District.

..Respondent/Respondent/Complainant

Prayer: Criminal Appeal filed under Section 14(A) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, against the order passed in Crl.M.P.No.3 of 2018 on the file of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur, challenging the Dismissal bail order.

For Appellant : Mr.P.Kalimuthu

For Respondent : Mrs.T.P.Savitha

Government Advocate (Criminal Side)

ORDER

The accused in Crime No.10 of 2017 on the file of the respondent / Inspector of Police, All Women Police Station, Tiruppur South is the appellant before this Court in this appeal in Crl.A.No.46 of 2018.

2.The case of the appellant/accused is that the respondent/police has registered a case against this appellant for the alleged offences under Sections 5(1), 5 (m), r/w 6 of Protection of Child from Sexual offences Act 2012 and Sections 3(1), (w), (i), 3(2), (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of

Atrocities) Amendment Act and 506(i) of I.P.C. in Crime No.10 of 2017 on the file of the respondent/police and arrested the appellant on 30.11.2017, from that day onwards he is in judicial custody.

3.The further case of the appellant is that there was a wordy quarrel arosed between the appellant's family and de-facto complainant's family and having personal vengeance against the appellant's family by influencing the political parties, this appellant/accused was falsely implicated in this case on the ground that the de-facto complainant by namely, Dhanalakshmi has given a complaint alleging that she is the mother of the victim aged about 7 years, who is studying in Panchayat Union Middle School, Palavanchipalayam, Tiruppur against the sexual harassment on her minor girl aged about 7 years.

4.Pursuant to the above complaint, a case has been registered in Crime No.10 of 2017 for the offences under Sections 5(1), 5(m), r/w 6 of Protection of Child from Sexual offences Act 2012 and Sections 3(1), (w), (i), 3(2), (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act and 506(i) of I.P.C. on the file of the respondent/police and arrested this appellant on 30.11.2017 and from that day onwards, the appellant is in judicial custody.

5.The case of the prosecution is that on 29.11.2017 at about 15 hours the de-facto complainant Smt.Dhanalakshmi W/o Marimuthu lodged a complaint before the Sub-Inspector of Police, All Women Police Station (South), Tirupur City by stating that the de-facto complainant is belongs to Scheduled Caste community and her daughter by namely minor Desika aged about 7 years who is studying 1st Standard in Panchayat Union Middle School, Palavanchipalayam, Tiruppur. The appellant/accused used to come to his relative house situate near the de-facto complainant's house. While so, on 26.11.2017 at about 17.00 hours, the appellant/accused came to his relative's house and with an intention to commit sexual harassment with the minor girl aged about 7 years. He had taken the minor Desika to the 2nd floor of New Housing Board building under construction and removed the panties of the victim girl and inserted his finger in to the private part and also squeezed the chest of the victim girl and thereafter the appellant/accused threatened the minor Desika by saying if she disclosed the matter to any one, he would kill the minor Desika. The de-facto

complainant also stated that prior to this occurrence, the appellant/accused had committed the sexual harassment to the victim girl on three occasions and the de-facto complainant has given the complaint when she get the knowledge of the sexual harassment made by this appellant/accused.

6.The case of the prosecution is that on receipt of the complaint from the de-facto complainant, a case has been registered in Crime No.10 of 2017 on 29.11.2017 by the Sub-Inspector of Police, All Women Police Station (South) Tirupur City and submit the said F.I.R. before the Assistant Commissioner of Police, South Range. On receipt of the said report, the Assistant Commissioner of Police went to the scene of occurrence drew rough sketch, observation mahazar in the presence of witnesses viz., Ganesan and Gopal and also recorded the statement of the de-facto complainant and 15 other witnesses and recorded their statements.

7.The prosecution further states that during the course of investigation, on 30.11.2017 at about 7.00 hours, the Assistant Commissioner of Police, South Range, Tirupur City was arrested the appellant/accused near Petrol Bunk, in front of the bus stop, Veerapandi Junction, Palladam Road, Tiruppur and recorded his confession statement in the presence of witnesses, then the appellant/accused was produced before the Magalir Neethimandram (FTC Mahila Court) Tiruppur and remanded into judicial custody.

8.The Assistant Commissioner of Police further states that after completion of elaborate and detailed investigation, based on the witnesses statement and material evidences, the Assistant Commissioner of Police, South Range, Tirupur City has filed a charge sheet in the above crime number before the Magalir Neethimandram (FTC Mahila Court), Tiruppur and the same is pending before the said Court.

9.It is the further case of the appellant is that in the above said circumstances, this appellant/accused has filed a bail petition under Section 439 of Cr.P.C. in CrI.M.P.No.3 of 2018 in Crime No.10 of 2017 before the learned Magalir Neethimandram (FTC Mahila Court), Tiruppur seeking bail which was dismissed on the only ground by saying that the investigation is pending and it is premature stage, therefore, the learned Magalir Neethimandram dismissed the bail petition on 05.01.2018.

10. Against the order of dismissal in Crl.M.P.No.3 of 2018 dated 05.01.2018 passed by the learned Magalir Neethimandram (FTC Mahila Court), Tiruppur, the appellant/accused has approached this Court and filed this appeal in Criminal Appeal No.46 of 2018.

11. On receipt of the notice in this appeal, the Assistant Commissioner of Police, South Range, Tiruppur City Mr.K.Thangavel, has filed his counter for the appeal filed by the appellant/accused in Crl.A.No.46 of 2018. The Assistant Commissioner of Police has narrated the entire facts which was mentioned in his counter and he is strongly opposed to grant bail to the appellant/accused on the ground that the victim girl is aged about 7 years old and she was affected in the sexual harassment on three occasions by this appellant and if this Court grant bail to the appellant/accused, then the appellant/accused has threatened the victim girl and witnesses and also may absconding which will affect the trial proceedings. The Assistant Commissioner of Police also states that the appellant/accused may tamper the evidence and threatened the witnesses and it will affect the trial proceedings and hence he strongly opposed to grant bail to the appellant/accused.

12. I heard Mr.P.Kalimuthu, learned counsel appearing for the appellant and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) appearing for the respondent and perused the records and also perused counter affidavit filed by the respondent/Assistant Commissioner of Police, South Range, Tiruppur.

13. It is the case of the prosecution that seven years old minor girl was sexually harassed by the appellant/accused, not only harassed, but also threatened with dire consequences.

14. It is further case of the prosecution is that the de-facto complainant has given the complaint when she get the knowledge about the sexual harassment made by this appellant/accused on the minor girl aged about 7 years, and based on that a case was registered in Crime No.10 of 2017 for the offences under Sections 5(1), 5(m), r/w 6 of Protection of Child from Sexual offences Act 2012 and Sections 3(1), (w), (i), 3(2), (va) of the Scheduled Castes

and the Scheduled Tribes (Prevention of Atrocities) Amendment Act and 506(i) of I.P.C. and arrested the appellant/accused on 30.11.2017.

15. In the counter affidavit itself, the Assistant Commissioner of Police, South Range, Tiruppur mentioned that already entire investigation was completed and more than 15 other witnesses were examined in this case and charge sheet was also laid before the learned Magalir Neethimandram (FTC Mahila Court), Tiruppur and the same is pending for trial.

16. Thus being the case, once the entire investigation was completed and charge sheet was also filed before the concerned Court namely, Magalir Neethimandram, (FTC Mahila Court), Tiruppur, there is no apprehension about the tampering of witnesses by this appellant/ accused.

17. Apart from this, I have also considered that though the appellant/accused arrested on 30.11.2017 and for the past one year the appellant/accused is in judicial custody. Apart from this, the Assistant Commissioner of Police also filed counter affidavit by stating that the entire investigation was completed and charge sheet was also already filed before the Magalir Neethimandra, (FTC Mahila Court), Tiruppur. Therefore, tampering of the witnesses and documents and also threatening the witnesses by the appellant/accused will not arosed in this case. When the entire investigation was completed and charge sheet also laid before the Court concern, I am inclined to consider the appeal which was filed by the appellant/accused for bail who is in judicial custody from 30.11.2017 i.e., for more than one year and I passed the following orders.

18. In the result:

(a) this Criminal Appeal is allowed by setting aside the order passed in CrI.M.P.No.3 of 2018 dated 05.01.2018, on the file of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur;

(b) the appellant/accused is released on bail on condition that the appellant/accused should execute two sureties for a like sum of Rs.25,000/- each to the satisfaction of the

learned Sessions Judge, Magalir Neethimandram
(Fast Track Mahila Court), Tiruppur;

(c) on further condition that the
appellant/accused is directed to report before
the Court viz., the learned Sessions Judge,
Magalir Neethimandram (Fast Track Mahila Court),
Tiruppur daily at 10.30 a.m. until further
orders;

(d) the learned Sessions Judge, Magalir
Neethimandram (Fast Track Mahila Court),
Tiruppur is directed to dispose of the case
within a period of six months from the date of
receipt of a copy of this order.

Sd/-

Assistant Registrar(CS v)

//True Copy//

Sub Assistant Registrar

vs

To

THE SESSIONS JUDGE,
MAGALIR NEETHIMANDRAM (FAST TRACK MAHILA COURT),
TIRUPPUR.

2.THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION TIRUPPUR,
TIRUPPUR DISTRICT.

3. THE PUBLIC PROSECUTOR,
HIGH COURT
MADRAS.

WEB COPY

Cr1.A.No.46 of 2018

ASK(12/11/2018)