

BAIL SLIP

The Appellant herein/Accused Sankar s/o.Velumani m/25 years was directed to be released on bail in MP.1/2008 in CRL A 460/2008 dated.25/06/2008 by this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2018

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.A.No.460 of 2008

Sankar  
S/o.Velumani

.... Appellant

vs

State by  
The Inspector of Police,  
All Women Police Station,  
Athur, Salem District.  
Crime No.17/2004

.... Respondent

Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against the judgment of learned Judge, Mahalir Neethi Mandram, Salem, passed in S.C.No.34 of 2007 on 30.05.2008.

For Appellant : Mr.V.R.Rajasekaran

For Respondent : Mr.V.Arul,  
Additional Public Prosecutor

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JUDGMENT

This appeal arises against the judgment of learned Judge, Mahalir Neethi Mandram, Salem, passed in S.C.No.34 of 2007 on 30.05.2008.+

2. Appellant/accused faced prosecution for offences u/s.376 and 417 IPC in case tried in S.C.No.34 of 2007 on the file of learned Judge, Mahalir Neethi Mandram, Salem.

Prosecution case is that on 15.05.2004 at about 10.00 p.m., appellant/accused, under promise of marriage, had sexual intercourse with the victim and later refused to marry her. A case in Crime No.17 of 2004 on the file of respondent was registered for offences u/s.376 IPC. Upon completion of investigation, a charge sheet was filed informing commission of offence u/s.376(1) IPC before learned Judicial Magistrate I, Attur. On committal, the case was tried in S.C.No.34 of 2007 on the file of learned Judge, Mahalir Neethi Mandram, Salem.

3. Before trial Court, prosecution examined 13 witnesses and marked 10 exhibits. 1 witness was examined on the side of defence and no exhibits were marked. On appreciation of materials before it, trial Court, under judgment dated 30.05.2008, while acquitting appellant/accused of offence u/s.376 IPC, convicted him for offence u/s.417 IPC and sentenced him to 1 year R.I. and fine of Rs.2,000/- i/d 3 months R.I. There against, the present appeal has been filed.

4. Heard learned counsel for appellant and learned Additional Public Prosecutor.

5. It is brought to notice that the victim died before trial and her father was examined as PW-1. Court below has, in convicting appellant/accused for offence u/s.417 IPC, held that he had indulged in sexual intercourse with the victim upon promise of marriage and thus cheated her. It is the evidence of PW-1, father of victim, that the victim was found pregnant before marriage and accordingly, she and the appellant entered upon marriage even before preference of complaint in the case, such marriage having been conducted by him. PW-1, father of victim, has admitted that owing thereto, a dispute arose between him and the father of appellant/accused. As he was abused by appellant's father, PW-1 had preferred a complaint. Therefore, clearly, Court below is wrong in holding that appellant has committed the offence of cheating by refusing to fulfil his promise of marriage.

6. The Criminal Appeal shall stand allowed. The judgment of learned Judge, Mahalir Neethi Mandram, Salem, passed in S.C.No.34 of 2007 on 30.05.2008 shall stand set aside. Appellant is acquitted of all charges. Fine amount, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

As it was brought to notice that the infant girl child born to the victim and appellant, presently aged 12, is under the care and custody of PW-2, sister of victim, this

Court has required appellant to deposit a sum of Rs.1,00,000/- to the credit of S.C.No.34 of 2007 on the file of learned Judge, Mahalir Neethi Mandram, Salem, towards providing for the welfare of the child. Accordingly, appellant has deposited a sum of Rs.1,00,000/-. Trial Court is directed to cause deposit of the sum of Rs.1,00,000/- lying to the credit of S.C.No.34 of 2007 on its file in the name of the minor girl child viz., Sathiya Priya, with any nationalised bank. The interest on such deposit may be drawn by PW-2 once in three months towards expending the sum for the benefit of the minor child. The minor child Sathiya Priya shall, upon attaining majority, be entitled to deal with the said sum in any manner deemed fit. It will be open to her to withdraw the fixed deposit held with the nationalised bank upon her attaining majority and without any further orders being passed by this Court. The concerned nationalised bank shall, upon being satisfied with her identity, deal with the deposit as deemed fit by her. An additional copy of this judgment is to be forwarded to the office of Public Prosecutor towards the same being served upon PW-2 through the jurisdictional respondent police.

Sd/-

Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

gm

To

1.Mahilar Neethi mandram  
salem.

2.The Inspector of Police,  
All Women Police Station,  
Athur,  
Salem District.

3.The Public Prosecutor,  
High Court, Madras. (2 copies)

4.The Judicial magistrate I,  
Athur

+1cc to Mr.V.R.Rajasekaran , Advocate SR.No. 19885

CrI.A.No.460 of 2008

VSN II

ASK(24/09/2018)