

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.08.2018

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THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.19989 of 2018 &
CrI.M.P.No.10650 of 2018

1.R.Bharathi
2.R.Neelakandan
3.U.Venkatesan
4.E.Manikandan ...Petitioners/A1 to A4

Vs

The State rep. By
the Inspector of Police,
Thiruvannamalai Police Station,
Crime No.933 of 2018
Thiruvannamalai District.Respondent/Complainant

Criminal Original Petition filed under Section 407
Cr.P.C, to withdraw the case in S.C.No.92 of 2018 on the file of
the learned Sessions Judge, Mahila Court, Thiruvannamalai and to
transfer the same to some other District for fair and impartial
trial.

For Petitioners : Mr.N.Manokaran

For Respondent : Mr.C.Raghavan,
Govt. Advocate for R2

सत्यमेव जयते
O R D E R

These petitioners are facing trial in S.C. No.92 of 2018,
before the Mahila Court, Thiruvannamalai for the offences under
Sections 376 and 511 IPC. While so, the petitioners have filed
the present transfer petition.

2.Heard Mr.N.Manokaran, learned counsel for the
petitioners and Mr.C.Raghavan, learned Government Advocate
(Criminal Side) for the respondent.

3.It is the case of the prosecution that one Alina,
aged about 20 years, came to Thiruvannamalai from Moscow, as a
tourist and was residing in the Guest House. On 14.07.2018, she

was gang raped, pursuant to which, an FIR was registered in Crime No.933 of 2018 and the investigation was taken up by the police.

4.Mr.N.Manokaran, learned counsel for the petitioners contended that the incident had allegedly occurred on 14.07.2018; the FIR was registered on 16.07.2018; the investigation was completed on 24.07.2018 and the charge sheet was filed in PRC No.24 of 2018 on the file of the Judicial Magistrate I, Thiruvannamalai. He further submitted that the case was committed to the Court of Sessions on 30.07.2018 and the case is now ripe for trial before the Mahila Court, Thiruvannamalai. On this basis, Mr.N.Manokaran, learned counsel for the petitioners submitted that the entire investigation has been completed at a breakneck speed by the police and an undue haste has been shown by the administration. The bail applications in CrI.M.P.No.2829 to 2831 of 2018, were dismissed by the Principal Sessions Judge, Thiruvannamalai. Thereafter, the District Collector had recommended the detention of the accused under Act 14 of 1982. Accordingly, detention order was passed on 27.07.2018 against the petitioners. Thus, according to the learned counsel for the petitioners, the accused will not get a fair trial.

5.Under Section 167 Cr.P.C., if the police are not able to complete the investigation within a period of 24 hours fixed by Section 57 Cr.P.C., the arrested accused should have to be produced before the Court for remand. Thus, the law mandates that investigation of the case should be done expeditiously. Just because the police have completed the investigation expeditiously and filed the charge sheet on 24.07.2018, they cannot be faulted. The charge sheet was filed before the Judicial Magistrate-I, Thiruvannamalai on 24.07.2018. The accused were produced before the Judicial Magistrate, Thiruvannamalai, on 27.07.2018 on which date, the copies were furnished under Section 207 Cr.P.C. by the Magistrate. Thus, there were two parallel proceedings on 27.07.2018, viz., committal proceedings in PRC No.24 of 2018 before the Judicial Magistrate I, Thiruvannamalai and hearing of bail application by the Principal District and Sessions Judge, Thiruvannamalai, incidentally on the same day. The bail application was dismissed on 27.07.2018 and the case was committed to the Court of Sessions only on 30.07.2018. Hence, the detention of the petitioners under the Act 14 of 1982, was an administrative decision taken by the District Collector and he being the detaining authority, no mala fides can be attributed to them for transferring the trial out of Thiruvannamalai District.

6.Mr.N.Manokaran, learned counsel for the petitioners

contended that a meeting was held by the Principal District Judge, District Collector, Additional Superintendent of Police and Inspector of Police, Tiruvannamalai P.S., in which, it was publicly announced that maximum punishment will be given to the offenders. Thus, the learned counsel for the petitioners contended that all the stakeholders are pre-determined. However, the said statement is not attributed to the Principal District Judge, who is said to have been in the meeting. Of course, on 27.07.2018, the Legal Services Authority granted financial aid [victim relief fund] of Rs.2 lakhs to the de facto complainant and the Principal District Judge, being the Chairman of the Legal Services Authority of the District, was required to be present for disbursement of the amount from the Victim Relief Fund.

7. Be that as it may, the trial in this case is not before the Principal District and Sessions Court, Thiruvannamalai and it is before the Additional Mahila Judge, Tiruvannamalai, against whom there is absolutely no

allegation.

8. Learned counsel for the petitioners placed strong reliance on the judgments of the Supreme Court in *Kanaklata v. State* [(NCT of Delhi), 2015 (6) SCC 617], *Captain Amarinder Singh v. Parkash Singh Badal and Others*, [2009 (6) SCC 260], and *K. Anbazhagan vs. J. Jayalalithaa* [2004 (3) SCC 767], to drive home the point that justice hurried would amount to justice buried. True, in those cases, the Supreme Court had transferred the cases for trial for the reasons given therein.

9. In *Kanaklata* (supra), the trial Court discharged the accused which was set aside by the superior Court and the matter was once again sent to the same Court who discharged the accused. In that context, the Supreme Court transferred the trial.

10. In *Amarinder Singh v. Parkash Singh Badal*, *Parkash Singh Badal*, the first respondent, was the Chief Minister of State of Punjab. Though the plea of transfer was rejected, the Supreme Court has reiterated the importance of fair trial as part of Article 21 of the Constitution of India. In *Anbalagan* (supra), *J. Jayalalithaa*, the accused therein, was the Chief Minister of the State of Tamil Nadu during trial and therefore, the Supreme Court transferred the case to Bangalore.

11. In this case, most of the witnesses are from Thiruvannamalai area and undue prejudice would be caused to those witnesses, if the case is transferred to any other

District. At the risk of repetition, the trial in this case is not before the Principal District Judge, but, before the Additional Mahila Judge, Thiruvannamalai.

12.Hence, this Court is of the view that this petition is liable to be dismissed as being devoid of merits and the same is dismissed accordingly. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1.The Sessions Judge, Mahila Court,
Thiruvannamalai.

2.The Inspector of Police,
Thiruvannamalai Police Station,
Thiruvannamalai District.

3.The Public Prosecutor,
High Court of Madras,
Chennai.

+lcc to Mr.N.Manokaran, Advocate SR.No.55554

CRL.O.P.No.19989 of 2018 &
Crl.M.P.No.10650 of 2018

KJI (CO)
GN(31/08/2018)

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