

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Crl.A.No.780 of 2018

Suriyakrishna

...Appellant/Accused

Vs.

The Deputy Superintendent of Police,
Valparai Subdivision,
Crime No.219 of 2018, (Kottur Police Station)
Coimbatore District. ...Respondent/Complainant

The Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure to call for records relating to the order dated 19.11.2018 made in C.M.P.No.3378 of 2018 on the file of the learned Principal District & Sessions Court cum Special Court for SC/ST cases, Coimbatore and set aside the same by allowing the criminal appeal and enlarge the petitioner on bail in connection with the case in Crime No.219 of 2018 pending on the file of the respondent police.

For Petitioner : Mr.D.R.Arun Kumar

For Respondent : Mr.V.Saratha Devi,
Govt. Advocate (Crl.Side)

JUDGMENT

This criminal appeal has been filed against the order passed by the learned Principal District and Sessions Judge, Special Court for SC/ST Cases, Coimbatore, in C.M.P.No.3378 of 2018 dated 19.11.2018 rejecting the bail petition filed by the petitioner herein.

2 The petitioner is an accused in Crime No.219 of 2018 on the file of the Kottur Police Station, Coimbatore, for the alleged offence punishable under Sections 417, 374, 506(i) IPC r/w Sec.3(1)(s), 3(w)(i)(ii) and 3(2)(v-a) of SC/ST (PA) Amendment Ordinance, 2015.

3 The case of the prosecution was that the petitioner and the defacto complainant had an affair and the petitioner falsely promised the defacto complaint that he would marry her and under the pretext of such promise, she had physical

relationship with the petitioner. After having physical relationship, the petitioner refused to marry the defacto complainant stating that she belongs to SC/ST community. On the basis of the complaint given by the defacto complainant, a case was registered in Cr.No.219 of 2018 and the petitioner was remanded to judicial custody for the aforesaid offences.

4 The petitioner herein has moved a bail petition in C.M.P.No.3378 of 2018, before the Court below. However, the Court below has rejected the bail application on the basis of the facts of the case and also on the basis of the facts that the investigation has not yet completed and the medical examination of the defacto complainant was not completed. The order was passed on 19.11.2018.

5 When the matter was taken up for hearing today, it is submitted that the medical examination has been completed. From the facts as mentioned by the trial Court, it appears that there was an affair between the petitioner and the defacto complainant and due to the affair there was a physical intimacy between the petitioner and the defacto complainant. Although this fact was denied by the petitioner, however, from the investigation, it is revealed that the petitioner having developed relationship with the defacto complainant, later on, reneged his promise on the basis of the community status of the defacto complainant. Therefore, it is a serious case of offence under SC/ST Act, for which, the petitioner was being tried.

6 The learned counsel appearing for the petitioner would submit that the petitioner has been incarcerated for more than 70 days and at the time when the offence was committed, he was an Engineering student and the defacto complainant was also an Engineering student. According to the learned counsel that in view of the incarceration, the petitioner's future is at stake and no prejudice would be caused to the prosecution, if the petitioner is released on bail. According to the learned counsel that the trial Court mechanically dismissed the bail petition without proper appreciation of the case of the petitioner.

7 At this, the learned Government Advocate (Cr.Side) appearing for the respondent would submit that the petitioner being charged under serious offence for violation of SC/ST Act and violation of Sections 417, 376 and 506(i) of IPC, is not entitled to grant of bail. However, it is admitted that the medical examination of the defacto complainant has been completed.

8 Heard the rival submission made by the learned counsel appearing on either side and perused the materials placed on record.

9 This Court, after considering the facts and the materials placed on record, is of the view that the petitioner being a student of Engineering, need not suffer incarceration during trial as the same would affect his education as well as the prosperity. Although the physical intimacy is revealed only on the basis of the affair between the petitioner and the defacto complainant, in any case, it has to be seen that whether the petitioner had extended any promise to the defacto complainant or not and the same has to be established during trial. According to the learned counsel for the petitioner that the offence under SC/ST Act did not take place and so is offence under Section 506(i). According to the petitioner, he has been falsely implicated for such offence. This Court cannot come to any conclusion on such submissions. Prima facie this Court is in favour of the petitioner for being enlarged on bail, particularly considering the age of the petitioner and the circumstances of the case. Moreover, it appears from the final paragraph of the order passed by the Court below that when medical examination was not yet completed, and therefore, the Court was not inclined to grant bail. After passage of time in the change of circumstances, when the fact of the matter is that the medical examination has been completed, this Court feels that there is no impediment for the petitioner being enlarged on bail.

10 For the above said reasons, the order dated 19.11.2018 passed by the learned Principal District and Sessions Judge, Coimbatore, in C.M.P.No.3378 of 2018 is hereby set aside and the petitioner is ordered to be released on bail on his 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 Principal District & Sessions Court - cum - Special Court for SC/ST Cases, Coimbatore, and on the following conditions:

[a] 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.

[b] the petitioner shall report before the Judicial Magistrate Concerned, once in a week at 10.30 a.m. until further orders.

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

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

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

[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District & Sessions Court
cum Special Court for SC/ST cases, Coimbatore.
2. The Public Prosecutor, High Court of Madras.
3. The Deputy Superintendent of Police,
Valparai Sub Division, Coimbatore District.

+2cc to Mr.D.R.Arun Kumar, Advocate, S.R.No. 87644, 86914

Crl.A.No.780 of 2018

SJ(CO)
GN(18/12/2018)

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