

**BAIL SLIP**

The Appellant/Accused viz **kedirajeshkanna** S/o.Mani was released on bail order date 05/04/2011 made in MP No.1/2011 in CRL A (MD) 71/2011

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 03.10.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
Crl.A(MD)No.71 of 2011

Kedi @ Rajeshkanna

.. Appellant/Sole Accused

Vs.

The State represented by
The Inspector of Police,
Ayyampettai Police Station,
Thanjavur District.
(Crime No.48 of 2008)

.. Respondent/Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure, against the Judgment of conviction and sentence dated 29.12.2010 passed in S.C.No.33 of 2010 by the learned Additional District and Sessions Judge (EC Court), Thanjavur.

For Appellant : Mr.M.Karunanithi
For Respondent : Mr.A.Robinson
Government Advocate (Criminal side)

JUDGMENT

The appeal against conviction and sentence is preferred by the sole accused in S.C.No.33 of 2010 on the file of the learned Additional District and Sessions Judge (EC Court), Thanjavur, vide judgement dated 29.12.2010.

2. The short point involved in this appeal is not on the merits and on the age of the accused. While the prosecution relies upon Ex.P.22 extract of the school certificate where the accused Rajesh Kanna's date of birth shown as 28.05.1988, the radiologist certificate Ex.P2 indicates that the age of the accused may be between 17 and 18 years. The opinion of the doctor cannot prevail upon the school extract. Therefore for all legal purpose and as per the guidelines of the Honourable Supreme Court, the school extract has to prevail upon. But unfortunately, in this case, the school extract, which is marked as Ex.P.22 through the investigation officer-PW.14 cannot be proper way of proving the contents of the said document.

3. Since the entire decision of the case will be based on the age of the accused and the prosecution is liable to positively prove the age of the accused is not below 18 years, it is necessary



to set aside the judgement of the trial Court.

4. In the result, this Criminal Appeal is allowed and the trial Court judgement made in S.C.No.33 of 2010 dated 29.12.2010 is set aside. The matter is remanded back to the Trial Court for consideration of the age of the accused alone.

5. The prosecution shall be at liberty to produce evidence both oral and documentary to ascertain the age of the accused. The trial Court is directed to dispose of the case within a period of two months from the date of receipt of a copy of this judgment. The appellant is directed to appear before the trial Court on 30.10.2018 for further proceedings.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub Assistant Registrar(CS-I)

PJL

To

1. The Additional District and Sessions Judge, (EC Court),
Thanjavur.

2. The Judicial Magistrate No.III,
Thanjavur.

3. The Inspector of Police,
Ayyampettai Police Station,
Thanjavur District.

4. The Superintendent Central Prison,
Trichy.

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to,

The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.M.Karunanithi, Advocate in SR No.88550