

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.A.No.479 of 2019

D.Prabhakaran
S/o.Duraisamy

..Appellant/Petitioner

Vs.

State rep. by
Inspector of Police
Perambalur Police Station
Perambalur District.

..Respondent

Criminal Appeal filed under Section 14A (ii) of the SC/ST (Prevention of Atrocities) Act to set aside the order dated 24.07.2019 made in Crl.MP.No.1195 of 2019 on the file of the Special Judge cum Principal District and Sessions Judge, Perambalur, by allowing this Criminal Appeal by enlarging the appellant on bail pending trial in Special C.C.No.24 of 2018 on the file of the Principal District and Sessions Court, Perambalur.

For Appellant : Mr.B.Kumarasamy
For Respondent: Mrs.P.Kritika Kamal,

Government Advocate (Crl. Side)

J U D G M E N T

This appeal has been preferred seeking to set aside the order dated 24.07.2019 passed in Crl.MP.No.1195 of 2019 on the file of the Principal District & Sessions Court, Perambalur and to enlarge the appellant on bail pending trial in Special C.C.No.24 of 2018.

2. Dalit youths and non-Dalit youths of Ranganathapuram Village had a quarrel in a liquor shop, pursuant to which, on 08.07.2018, around 6.00 p.m., when three Dalit youths came to the place of occurrence for repairing the vehicle of one of them, they were spotted by Raman, Prabakaran, Kathiravan, Arun, Ramachandiran and Arulpandiyan and a quarrel

ensued between them. In that quarrel, it is alleged that non-Dalit youths had abused Dalit youths by referring to their caste name. Both sides challenged each other and fracas ensued, in which, some of non-Dalit youths had attacked one Deva and Muthukumar with a stick. The injured Deva was admitted into the hospital. On the complaint lodged by Muthukumar, the police registered a case in Crime No.446 of 2018 on 09.07.2018 for the offences under Sections 147, 341, 323, 307 IPC and Section 3(1) (1), 3(1)(r) and 3(1)(s) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 against six accused including Prabakaran, the appellant herein, who was arrayed as A2 in the FIR. On 09.07.2018, Deva succumbed to the injuries and therefore, the case was altered to one under Section 302 IPC. The police were able to arrest some of the accused and some others surrendered before the jurisdictional Court. However, Prabakaran went to Singapore, where he was employed. The police completed the investigation and filed a final report in Special S.C.No.24 of 2018 before the Special Judge, Special Court for SC/ST Act cases, Perambalur District, against seven accused including Prabakaran, who has been shown as A7 and was designated as an absconding accused. Therefore, the trial Court issued a non-bailable warrant for apprehending Prabakaran. The police intimated the Immigration Authorities and had issued a look-out circular against Prabakaran. When Prabakaran came to India on 11.07.2019, he was arrested and was produced before the Special Judge, Special Court for SC/ST Cases, Perambalur District. Prabakaran filed CrI.MP.No.1195 of 2019 seeking bail, which has been dismissed by the Principal District and Sessions Judge, Perambalur, on 24.07.2019, aggrieved by which, Prabakaran has filed the present Appeal.

3. Though the police served notice on Muthukumar, the de facto complainant herein, he has not chosen to appear before this Court.

4. Heard Mr.B.Kumarasamy, learned counsel for the appellant and Mrs.P.Kritika Kamal, learned Government Advocate (CrI. Side) for the respondent-State.

5. Today, Mr.M.Jeyaraj, SSI, Perambalur Police Station, Perambalur District, is present before this Court.

6. The learned Government Advocate (CrI. Side) submitted that after committing offence, Prabakaran had gone to Singapore and with great difficulty, he was arrested by the police, when he came to India on 11.07.2019.

7. Refuting the contention, the learned counsel for the appellant made the following submissions.

Prabakaran was employed in Singapore; his marriage with

Jayapriya was fixed on 17.06.2018, for which, he came to the Village on 13.06.2018; and he got married on 17.06.2018; after marriage, he stayed in the Village with his newly wedded wife; he booked his return tickets to Singapore; the fateful incident took place on 08.07.2018; it was Prabakaran, who had taken the injured Deva and had admitted him into the hospital; after admitting the injured Deva into the hospital, Prabakaran left for Singapore on 09.07.2018 via Trichy Airport; the FIR in this case was registered only on 09.07.2018; therefore, Prabakaran was not aware that he has been implicated in this case; only after the charge sheet was filed and when police came to Prabakaran's natal home for executing the warrant, he came to know that he has been implicated in this case and therefore, he himself voluntarily returned to India on 11.07.2019; at the Airport, he was arrested by the police and since then, he has been in incarceration.

8. This Court gave its anxious consideration to the rival submissions.

9. Under normal situation, this Court would not show any indulgence to an absconding accused. However, in this case, a reading of the FIR in Crime No.446 of 2018 shows that Prabakaran was merely present along with non-Dalit youths when fracas with Dalit youths took place on 08.07.2018. That apart, there is no material to show that Prabakaran had attacked the deceased Deva with any weapon much less a stick. The allegation in the FIR is that Prabakaran had fisticuffs with one Haridoss. The FIR also clearly states that after Deva got injured, it was Prabakaran and Manikandan, who had taken him into the hospital and had admitted him. The materials have also been placed before this Court in the form of affidavits dated 07.08.2019 sworn by Jayapriya and Duraisamy, the wife and father of Prabakaran respectively, wherein they have stated that Prabakaran is a Diploma Holder in Automobile Engineering and he got a job as Operator in CNC Machine in Unique Precision Engineers Pvt. Ltd., at Singapore in the year 2015 itself and was working there from then onwards. The marriage with Jayapriya was held on 17.06.2018, for which, he came on a month's leave to the Village on 13.06.2018. He was scheduled to leave for Singapore on 09.07.2018. But, unfortunately, the incident in question occurred on 08.07.2018.

10. In Paragraph Nos. 6 & 7 of the affidavit filed by Jayapriya, it has been stated as follows:

"6. I state that on 13.06.2018 my husband came to his native place for our marriage on 17.06.2018. Thereafter, he returned to Singapore on 09.07.2018 at about 4.30 p.m. from Trichy Airport. Neither my husband nor any of

my family members have no knowledge about the pendency of the case. Had the respondent or deceased family members informed the involvement of my husband into the alleged occurrence certainly, I would not have permitted him to attend his work.

7. I state that after got the information from the respondent police on 30.06.2019 I informed to my husband about the case and asked him to participate in the trial proceedings accordingly, my husband came to Trichy on 11.07.2019 at that time Emigration Officer arrested my husband based upon the look-out circular. Thereafter, my husband was remanded to judicial custody in respect of the above case."

11. This Court has no reason to disbelieve the aforesaid averments. In the peculiar facts and circumstances of the case, it cannot be stated that Prabakaran had deliberately fled to Singapore on 09.07.2018 after the incident. The fact remains that after the charge sheet was filed on 16.10.2018 and on coming to know that a warrant has been issued against Prabakaran, he returned to India. All the other accused in this case have been released on bail. In such view of the matter, it may be a travesty of justice, if bail is denied to Prabakaran.

12. In the result, the present Criminal Appeal is allowed and the order dated 24.07.2019 passed in CrI.M.P.No.1195 of 2019 on the file of the Principal District and Sessions Court, Perambalur, is set aside and the appellant is ordered to be released on bail, on the following conditions:

(i) The appellant shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only), with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the Special Judge-cum-Principal District and Sessions Judge, Perambalur.

(ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Special Judge-cum-Principal District and Sessions Judge, Perambalur, may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

(iii) On breach of any of the aforesaid conditions, the learned Sessions Judge is entitled to take appropriate action against the appellant in accordance with law as if the conditions have been imposed and the appellant

released on bail by the learned Sessions Judge himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005) AIR SCW 5560].

(iv) If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Judge-cum-Principal District and Sessions Judge, Perambalur.
2. The Inspector of Police Perambalur Police Station Perambalur District.
3. The Central Prison, Trichirapalli.
4. The Public Prosecutor, High Court, Madras.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.B.Kumarasamy, Advocate, S.R.No. 67877

Cr1.A.No.479 of 2019

RSY(CO)
GN(08/08/2019)