

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Crl.A.No. 685 of 2019

Abdhulrahuman

Appellant/A-2

Vs.

1. State rep by, The Inspector of Police,
Arovil Police Station,
Villupuram District.
(Crime No.195/2019) 1st respondent /complainant

2.Ranjitham 2nd Respondent/
Defacto Complainant

PRAYER:- This Criminal Appeal has been filed under Section 14(2) of Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act-2015, against the dismissal order dated 01.10.2019 in Crl.MP.No. 1455 of 2019 on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases registered under the SC/ST Act, Villupuram.

For Appellant : Mr. K.Selvarangan
For Respondents1 : Mr.M.Mohamed Riyaz, APP
R2 : No Appearance

JUDGMENT

- 1.This Criminal Appeal has been filed by the Appellant/A-14 against the order of dismissal of the bail application in Crl.MP.No.1455 of 2019 dated 01.10.2019.
- 2.This Court heard the learned counsel on either side and also perused the materials placed on record.
- 3.The brief facts of the prosecution of the case is hereunder:
On complaint given by one Sustikumaran, Village Administrative Officer of Pommiyarpalayam village, that an unidentified burnt body of a women aged about 17 years was found within his jurisdiction, a case in Cr.No. 195/2019 was registered by the respondent police under Section174 of Cr.P.C. Later during the investigation, it was found to be the body of one Lakshmi daughter of the second respondent on Ranjitha. Further, it came to light that the deceased Lakshmi had relationship with the

accused Arun Kumar and Abdoulrahuman, the petitioner herein and she became pregnant and since he had insisted the said Arunkumar to marry her, the accused had taken her to a secluded place, committed rape on her and thereafter, murdered her and to screen the evidence had set fire to the body of the deceased, Lakshmi. During the course of the investigation the petitioner and the said Arunkumar were arrested and remanded to judicial custody. The case has been later altered to one under Sections 302, 201, 120 (B), 364, 376 (D) r/w 3(2)(v), 3(2)(va), of the SC/ST (POA) Act 2015. The petitioner was arrested and remanded to judicial custody on 03.05.2019. Since the charge sheet was not filed within 90 days of arrest, the petitioner had filed an application for bail under Section 167(2) of Cr.P.C. for grant of bail. Though charge sheet was not filed, the learned trial Judge finding that the medical reports are yet to be received and finding that if the petitioner is released on bail, he would abscond and tamper the witnesses and further taking into consideration the averments made in the First Information Report and nature of the offence involved in this case had dismissed the petition for bail. Against which the present appeal has been filed.

4. The learned counsel for the petitioner would submit that there is no bar under the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act-2015, for invoking Section 167(2) of Cr.P.C. for grant of mandatory bail. He would submit that the petitioner was arrested on 03.05.2019 and he is in custody for more than five and half months and that the charge sheet has not been filed so far and thereby the petitioner is entitled to mandatory bail, whereas the learned Special Judge has passed an erroneous order dismissing the statutory bail which the petitioner is entitled as per the mandate of Section 167(2) of Cr.P.C. He would thereby seek for allowing the appeal and grant of bail. He would submit that the co-accused has been released on bail by this Court.
5. The learned Additional Public Prosecutor would submit that the charge sheet has not been filed so far. However the learned Trial Judge, taking into consideration that the medical report is awaited and also taking into consideration the heinous nature of the offences, had dismissed the bail.
6. What is to be seen whether the petitioner is entitled for statutory bail under Section 167(2) of Cr.P.C.?
7. Admittedly, the petitioner has been arrested on 03.05.2019 and he is in custody for more than five and half months, the charge sheet has not been filed so far. There is no provision under the Schedule Caste and

Schedule Tribe (Prevention of Atrocities) Act-2015, granting extension of time for filing charge sheet.

8. In Shri Ram Singh Batra Vs. The State reported in MANU/DE/0263/2005, the Hon'ble Apex Court has held that

" While Section 439 empowers the High Court and the Sessions Court to grant or refuse bail, those powers are discretionary powers. Section 167(2) does not allow for any discretion. This is a mandatory provision and whether bail has been granted or rejected under Section 439, if a case is made out for releasing the petitioner under Section 167(2), then such person has to be released irrespective of the order passed under Section 439".

9. The petitioner is entitled to be released on mandatory bail, thereby the criminal appeal stands allowed and the Appellant/A-2 is ordered to be released on bail on condition that the Appellant/A-2 shall execute 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 Sessions Judge, Special Court for Exclusive Trial of Cases registered under the SC/ST Act, Villupuram and on further conditions that:

[a] The petitioner shall report before the respondent police every day at 10.30 am and 5.30 pm, Until further orders.

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

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

[d] On breach of any of the aforesaid conditions, the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the SC/ST Act, Villupuram, 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].

[e] If the accused thereafter abscond, a fresh FIR can be registered under Section 229-A IPC.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

jrs

To

1. The Sessions Judge, Special Court for
Exclusive Trial of Cases registered under the
SC/ST Act, Villupuram.

2. The Inspector of Police,
Arovil Police Station, Villupuram District.

3. The Public Prosecutor, High Court, Madras.

+lcc to Mr.K.Selvarangan , Advocate SR.No. 86380

Cr1.A.No.685 of 2019

A.SK(16/10/2019)



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