

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 15.11.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.Nos. 705 & 709 of 2019

V.Jayagurunathan

.. Appellant in Crl.A.No. 705 of 2019

R.Thirumal

.. Appellant in Crl.A.No. 709 of 2019

Vs

1. State represented by
The Station House Officer, PCR Cell,
Through the Special Public Prosecutor,
Puducherry.

... 1st Respondent in Crl.A.705/19/Respondent in Crl.A.No.709/19

2. Kowsalya

.. 2nd Respondent in Crl.A.No. 705 of 2019

Prayer in Crl.A.No. 705 of 2019:- This Criminal Revision has been filed, under 14(a)(2) of the SC & ST(Prevention of Atrocities)Act, 1989 to set aside the order dated 04.10.2019 made in Crl.M.P.No.177/2019 before the Learned Special Judge under Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989/II Addl. Sessions Judge, Puducherry, and allow this Criminal appeal.

Prayer in Crl.A.No. 709 of 2019:- This Criminal Revision has been filed, under 14A(2) of the SC & ST(Prevention of Atrocities)Act, 1989 Amendment Act 1 of 2016 to set aside the order dated 04.10.2019 made in Crl.M.P.No.180/2019 before the Hon'ble II Additional Sessions Judge, Special Court for Exclusive trial of cases registered under the Scheduled castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Puducherry, and to enlarge the appellant on bail in Crime No. 2/2019 on the file of the respondent by allowing this Criminal Appeal on such terms and conditions as this Court may deem fit and proper.

For Petitioners : Mr.S.Karthikeyan
(In both appeals)

For Respondents : Mr. Bharathachakravarthi
Public Prosecutor (Pondicherry)
for R1 in Crl.A.709/19/
Respondent in Crl.A.705/19

Mr.Sankara Subbu
for Mr.B.Mohan
for R2 in Crl.A.705/19

COMMON ORDER

The present appeals are filed by the 1st and 4th accused/Appellants against the dismissal of application Nos. in Crl.M.P.No. 177/2019 and Crl.M.P.No. 180/2019 in Crime.No. 2 of 2019 dated 04.10.2019 passed by the learned II Additional Sessions Judge, Special Court for Exclusive trial of cases registered under the Scheduled castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Puducherry.

2. The petitioners have been arrayed as A1 & A4 and they have been charged for offences under Sections 176 CR.P.C. @ 342, 304 IPC r/w. Sec.34 IPC 342, 304, 330, 331, 348, 166, 166-A, 201, 220 IPC and under Sections 3(2)(V)(V-a) and (VI) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Amendment Act 2015 registered in Crime No.2 of 2019.

3. The case of the prosecution is that on receipt of information regarding the death of under-trial prisoner at the Government General Hospital, Puducherry, the Superintendent of Jail (Incharge) preferred a complaint to the Station House Officer, Kalapet Police Station at about 10.00 P.M, on 27.11.2018 and that the said complaint resulted in registration of the First Information Report in Crime.No. 71 of 2018 under Section 176 of Code of Criminal Procedure and since it was regarding death in custody, the learned Judicial Magistrate No.IV, Puducherry conducted inquest on the body of the deceased Jayamurthy, S/o. Selvakumar and filed his report. Further based on the report of the learned Judicial Magistrate, No.IV, Puducherry, case has been altered to offence Sections 304 and 342 of IPC and these appellants were arrayed as A1 and A4 in Crime No. 71 of 2018 and arrested and remanded to Judicial custody.

4. Thereafter, on the basis of the statement of the family members of the deceased and based on the representations made, the case has been transferred to the present respondent Police and pending investigation in Crime No. 2 of 2019. The petitions for bail have been filed by accused 1 & 4 in Crl.M.P.Nos. 177 & 180 of 2019.

5. The Special Court, finding that the investigation is pending and finding that there was a prima facie evidence of torture of the victim at the hands of the appellants and other accused and also on a finding that the investigation is in premature stage, and taking into consideration, the heinous nature of the offence and the objection of the intervenor has dismissed the bail petitions. The present appeals are filed against the dismissal of the bail application.

6. The learned counsel for the appellant/A1 would submit that the Appellant is a Sub Inspector of Police attached to Bhahour Police Station and that he had arrested the deceased during the course of investigation in respect of a theft case. The deceased/Victim had sustained injuries while riding a motor cycle even prior to arrest. The injuries were on the right hand which were abrasions. Prior to remanding the deceased/Victim, the appellant, had produced him before the Government Doctor and obtained a certificate. At the time of Examination by the doctor, the deceased/victim had disclosed that he had sustained those injuries in the accident. After obtaining the certificate from the doctor, the deceased/victim was produced for remand before the learned Magistrate and no complaints of torture was made by the deceased/victim, at the time of remand and no entries regarding the injuries were also made in the remand report. The deceased/victim was taken to the jail, where he died after four days while in judicial custody. Thereby, the appellant cannot be fixed with and held responsible for the subsequent injuries, he had sustained while in judicial custody which resulted in his death. The appellants cannot be held responsible for the death in custody.

7. He would further submit that major part of the investigation is over and thereby allowing the appeal and grant of bail will not hamper and hinder further investigation and thereby would seek for grant of bail.

8. The learned counsel for the appellant/A4 would submit that the appellant in the routine course of his duty had arrested the deceased/victim and thereafter produced him before the Sub Inspector of Police. He would further submit that there is absolutely no allegations against the appellant/A4 as if he

had tortured or caused injuries on the victim and thereby would seek for allowing of the appeal and grant of bail.

9. The learned counsel for the intervenor/wife of the deceased/victim would submit that custodial torture and death in custody are heinous offences. He would further submit that the deceased was taken into illegal custody and brutally tortured and to cover up the offence of custodial torture and death the appellants had obtained the false certificate from the Government Doctor, as if the deceased/victim had suffered injuries due to an accident. After obtaining the false certificate, the deceased/victim was produced before the Court and thereafter sent to Judicial custody, where the deceased succumbed to the injuries after four days. He would also submit that the appellants are Police Officers and that if bail is granted to them, there is every possibility of them threatening the witnesses and interfering with the investigation. He would further submit that the case has been recently transferred to the present respondent and that the investigation is at a premature stage.

10. The learned Additional Public Prosecutor would submit that the investigation is at the initial stage and the other accused are yet to be arrested and hence, he would oppose for grant of bail.

11. Heard the learned counsel and gone through the materials available on record.

12. This Court is of the opinion that investigation is in a premature stage and if bail is granted to the appellants at the stage, it would be detrimental to the progress of investigation. In view of the same, the Criminal Appeals are dismissed.

सत्यमेव जयते Sd/-

Assistant Registrar(CS VI)

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To:

1. The learned II Additional Sessions Judge, Special Court,
Puducherry.

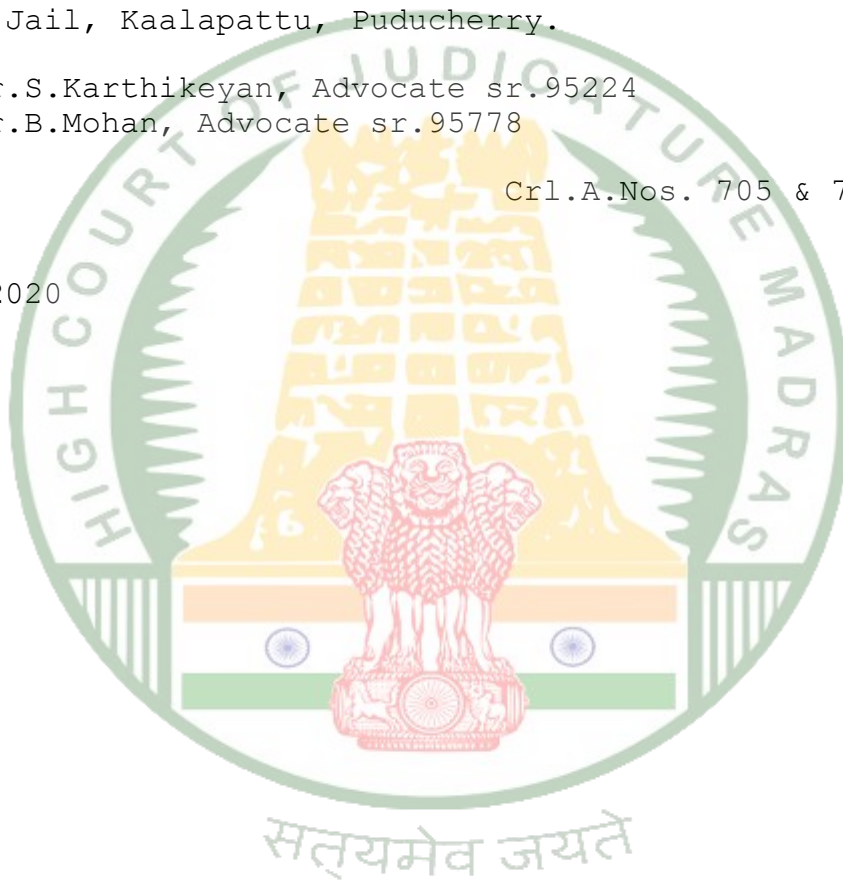
2. The State of Tamil Nadu,
The Station House Officer, PCR Cell,
Through the Special Public Prosecutor,
Puducherry.

3.The Superintendent,
Central Jail, Kaalapattu, Puducherry.

+1cc to Mr.S.Karthikeyan, Advocate sr.95224
+1cc to Mr.B.Mohan, Advocate sr.95778

Crl.A.Nos. 705 & 709 of 2019

rsk(co)
nr 21/02/2020



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