

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 16.05.2019

Pronounced on: 14.06.2019

CORAM**THE HONOURABLE MR. JUSTICE B.PUGALENDHI****Cr1.A(MD)No.135 of 2019**

Saravanan @ Saron .. Appellant/Petitioner/Accused No.1

Vs.

- 1.The State Rep. by
The Deputy Superintendent of Police,
Melur, Madurai District.
.. 1st Respondent/Investigation Officer
- 2.The Inspector of Police,
All Woman Police Station,
Melur, Madurai District.
Crime No.36/2017 .. 2nd Respondent/Respondent/Complainant
- 3.Alagi Sangeetha .. 3rd Respondent/Victim/Defacto Complainant

PRAYER: Criminal Appeal is filed under Section 14(A)(1) of the Scheduled Caste/Scheduled Tribes (Prevention of Atrocities Act), 2015 as amended by Act 1 of 2016, to call for the records pertaining to the order passed in Cr1.M.P.No.249 of 2019 on the file of the III Additional District and Sessions and District Judge (PCR), Madurai (Full Additional Charge), dated 21.03.2019 and set aside the same as illegal and enlarge the appellant on bail by allowing the appeal.

For Petitioner : Mr.T.Veerakumar

For Respondents : Mr.K.K.Ramakrishnan for R1 & R2
Additional Public Prosecutor

JUDGMENT

This criminal appeal is arising out of the order dated 21.03.2019 passed by the learned III Additional District and Sessions Judge (PCR), Madurai, in Cr.M.P.No.249 of 2018 in Crime No.36 of 2017, in and by which, the appellant's plea for bail came to be negatived.



2. The appellant was arrested in connection with Crime No.36 of 2017, on 11.03.2019, which was registered for the offences punishable under Sections 343, 417, 376, 506(i) IPC r/w Section 3(2) (Va) of SC/ST (PoA) Amendment Act 2015.

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3. The defacto complainant, namely, one Alagi Sangeetha, D/o Alagu aged about 19 years, lodged a complaint before the respondent police on 30.04.2017 that she is working in a Mill at Kovilpatti and the petitioner, who used to follow her, had proposed for marriage and therefore, they loved each other. On 27.04.2017, at about 12 noon, when she went to take bath, the accused, with a promise to marry, taken her to the motor room and had sexual intercourse with her. He had also kept her in the motor room for three days and had intercourse for several times and it is alleged that on 29.04.2017, the accused driven her out, abused her with filthy words by degrading her community. When she insisted for marriage, the accused refused to marry and also criminally intimidated her. Based on her complaint, though the case was registered in Crime No.36 of 2017 on 30.04.2017, the petitioner was arrested only on 11.03.2019 and thereafter, remanded to judicial custody.

4. As required under the Act, notice was ordered to the defacto complainant on 01.04.2019. A counter affidavit was filed on behalf of respondents 1 & 2 on 24.04.2019 and for the counter affidavit of third respondent, the matter was adjourned to 29.04.2019 and thereafter, a counter affidavit was also filed by the third respondent.

5. The learned counsel for the appellant would submit that the alleged occurrence took place on 29.04.2017 and he was arrested on 11.03.2019. For the past 77 days, the appellant was under incarceration and in fact, the co-accused was already released on bail. The learned counsel also contended that there is a delay in lodging the complaint. The appellant is a law abiding citizen and he has not absconded and the learned counsel prays for allowing the present appeal by granting bail.

6. The learned Additional Public Prosecutor objected for the grant of bail that the accused had detained the defacto complainant inside the motor room and raped her for several times. After the registration of the complaint in the year 2017, he was absconding and the respondent police was able to secure him only on 11.03.2019, after constituting a special team. The learned Additional Public Prosecutor, by referring to the recent judgment of the Honourable Supreme Court in **Criminal Appeal No.629 of 2019 (Anurag Soni Vs. State of Chhattisgarh)**, would submit that even if the defacto complainant gave consent for physical relationship with the accused by relying upon the promise made by the accused that he will marry her, it will not be taken as a consent to exempt the accused from the charge of rape as defined under section 375 IPC. The consent given on misconception of fact cannot be said to be a consent. The



promise given by the accused to marry the defacto complainant was a false promise and from the very beginning, there was no intention for the accused to marry the defacto complainant. Therefore, he prays for dismissal.

7. The victim / defacto complainant had also filed a counter affidavit that the accused is a highly influential person and he was continuously absconding for nearly two years and the first respondent has secured him only by forming a special team. If he is released on bail, then he would tamper the witnesses and since he belonged to a upper caste, life threat is also exists for the defacto complainant and her parents. Therefore, the learned counsel prays for dismissal.

8. Heard Mr.T.Veerakumar, learned counsel for the petitioner; Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor for the State and Mr.K.Muthumalai, learned counsel for the third respondent.

9. The occurrence was taken place on 29.04.2017. The age of the victim at the time of occurrence was 19 years. Admittedly, the defacto complainant and the accused loved each other and according to the complainant, the accused followed her, loved her, gave her false promise that he would marry her, taken her to a motor room, had sexual intercourse and that he continued to have sexual intercourse for several times.

10. The petitioner was arrested on 11.03.2019. He is in the jail for the past 77 days. Since the occurrence was taken place in the year 2017, the substantial portion of the investigation has been completed and even according to the first respondent, the statement of the victim under Section 164 Cr.P.C was also recorded. The learned Additional Public Prosecutor as well as the counsel for the third respondent have vehemently opposed for the grant of bail that the petitioner was absconding over a period of two years and with great difficulty, he was secured on 11.03.2019.

11. The occurrence was taken place on 29.04.2017 and as soon as the case was registered, the petitioner had approached this Court for a direction in CrI.O.P.(MD).No.8885 of 2017 and this Court disposed of the same on 13.07.2017 with a direction to the petitioner to surrender before the trial Court within a period of two weeks from the date of receipt of a copy of the order. But, the petitioner has not surrendered as directed by this Court. In the meantime, he was arrested on 11.03.2019.

12. Considering the period of incarceration and the fact that the substantial portion of investigation has been completed, this Court is inclined to grant bail. Accordingly, this Criminal Appeal is allowed. The order passed in CrI.M.P.No.249 of 2019 on the file of the III Additional District and Sessions and District Judge (FCR), Madurai (Full Additional Charge), dated 21.03.2019, is set aside and the appellant 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, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned III Additional District and Sessions and District Judge (PCR), Madurai, and on further condition that:

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- (i) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Trial Judge may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity.
 - (ii) on release, the appellant shall report before the respondent Police daily at 10:00 a.m., until further orders.
 - (iii) the appellant shall not tamper with evidence or witness either during investigation or trial.
 - (iv) the appellant shall not abscond either during investigation or trial.
 - (v) On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court 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 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].

Sd/-

Assistant Registrar (CO)

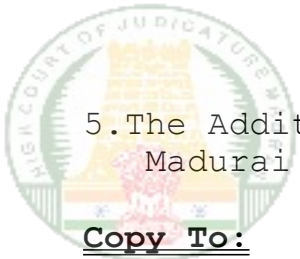
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Sub Assistant Registrar (CS-)

TM/gk

To

1. The III Additional District and Sessions
and District Judge (PCR),
(Full Additional Charge) Madurai.
2. The Deputy Superintendent of Police,
Melur, Madurai District.
3. The Inspector of Police,
All Woman Police Station,
Melur, Madurai District.
4. The Superintendent,
<https://hcservices.ecourts.gov.in/hcservices/>
Central Prison, Madurai.



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

Copy To:

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

+1 CC to M/s.T.VEERAKUMAR, Advocate (SR-9775[I] dated 17/06/2019)

**Judgment made in
Crl.A(MD)No.135 of 2019
14.06.2019**

ES/18.06.2019/5P/9C