

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.A.No.137 of 2020

Vijayakumar

... Appellant

Vs.

1.The State Rep.by
Station House Officer
Thindivanam Police Station.

2.M.Vinoth

...Respondents

PRAYER: Criminal Appeal filed under Section 14 A (2) of SC/ST (POA) Act, to set aside the order dated 30.01.2020 passed in Crl.M.P.No.161 of 2020 on the file of the Sessions Judge, Special Court for Exclusive trial of cases registered under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989, Villupuram and to enlarge the appellant on bail in connection with Crime No.401 of 2015 on the file of the respondent police.

For Appellant : Mr.R.Sreedhar

For Respondents: Mr.T.ShunmugaRajeswaran, for R1
Government Advocate (Crl.Side)
: R2 - No appearance

JUDGMENT

This appeal has been filed by the accused No.7 under Section 14A of the Schedule Tribe (POA) Act, 1989 (hereinafter referred to as the "SC/ST (POA) Act") against the dismissal of the bail application filed by the appellant in Crl.M.P.No.161 of 2020, on the file of the Special Court for Exclusive trial of Cases registered under the SC/ST (POA) Act, Villupuram, dated 30.01.2020.

2. Though notice was served on the second respondent/defacto complainant and his name also printed in the cause-list, he has not appeared either in person or through counsel. Hence, after hearing the arguments of the learned counsel for the appellant and the learned Government Advocate (Crl.Side) for the first respondent and perusing the materials, judgment is being passed in this appeal.

3. The learned counsel for the appellant/accused No.7 has submitted that the appellant is facing trial for the alleged offences under Sections 109, 147, 294(b), 324, 342 and 307 r/w 34 IPC & 3(1) (x), 3(2) (v) of the SC/ST Act, 1989 before the Special Court for Exclusive trial of cases registered under the SC/ST (POA) Act, Villupuram. He further submitted that the petitioner was regularly appearing before the trial Court and only on one hearing i.e., on 01.10.2018, he did not appear and hence, the trial Court has issued NBW and the said NBW was executed on 23.01.2020 and produced before the trial Court and he was remanded to Judicial Custody and from that date onwards, he is in custody. He further submitted that the appellant has filed a bail application before the trial Court in Crl.M.P.No.161 of 2020 but, the trial Court has dismissed the said bail application by the order dated 30.01.2020. He further submitted that the trial is almost over and therefore, he prayed to give one more chance to the appellant and release him on bail. He further submitted that if the appellant is released on bail, hereafter, he will regularly appear before the trial Court and therefore, he prayed to set aside the order passed by the trial Court and release the appellant on bail.

4. Per contra, the learned Government Advocate (Crl.Side) has submitted that on the previous occasions also, the appellant did not appear before the trial Court and on those occasions NBWs were issued and subsequently, the appellant has surrendered and filed petitions to recall the said NBWs and considering the same, the trial Court has also liberally allowed the said petitions. He further submitted that on 01.10.2018 since the appellant has not appeared NBW was issued and thereafter, he did not surrender before the trial Court and file any petition to recall the NBW. He further submitted that the said NBW was executed with great difficulty after 15 months on 23.01.2020 and hence, he strongly opposes this appeal. He further submitted that if the petitioner is released on bail, once again he may not appear before the trial Court and the trial will be stalled. He further submitted that already all the prosecution witnesses were examined and Investigating Officer was also examined and posted to 19.03.2020 for his further examination and therefore, he opposes this appeal.

5. A perusal of the extract of the case dairy status shows that on 30.09.2016, the appellant herein has not appeared before the trial Court and hence, NBW was issued. Subsequently, on 03.10.2016, he has appeared before the trial Court and filed a petition to cancel the said NBW and the same was allowed and accordingly, NBW was cancelled. Thereafter, on 12.01.2017 again the appellant did not appear and hence, for the second time NBW

was issued and subsequently, it was cancelled. Thereafter, on 06.04.2017, the appellant has not appeared before the trial Court and hence for the third time NBW was issued. On 21.04.2017, the appellant surrendered before the trial Court and filed a petition to recall the warrant and the same was allowed. On 04.05.2018, again the appellant has not appeared before the trial Court and hence, NBW was issued for the fourth time. Subsequently, on 08.05.2018 on the petition filed by the appellant the said NBW was cancelled. Thereafter, on 01.10.2018 again the appellant did not appear before the trial Court and for the fifth time NBW was issued. Thereafter, it appears that the appellant has forgotten about the pendency of the case and on 23.01.2020 the respondent police has executed the said warrant and produced before the trial Court and the trial Court has remanded the appellant to Judicial Custody and from that date onwards, he is in custody.

6. The conduct of the appellant shows that he not at all bothered about the case. He was very irregular in appearing before the court. Five times NBWs were issued. The trial court has liberally allowed the warrant recall petitions four times. Though lastly NBW was issued on 01.10.2018, he was not surrendered before the court for nearly 15 months. Finally on 23.01.2020, the police has executed the said NBW and remanded him. It appears that the appellant has not stated any reason in his bail application for his non-appearance before the trial court for nearly 15 months. Under the said circumstances, this court is of the view that if the appellant is released on bail, he may not appear before the court. Further, already all the prosecution witnesses were examined before the trial court. Therefore, this court does not find any infirmity in the trial court's order.

7. Accordingly, this Appeal is dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

dna

To

1.The Sessions Judge, Special Court of SC/ST Act cases,
Villupuram.

2.The Station House Officer,Thindivanam Police Station.

3.The Public Prosecutor, High Court, Madras.

+1cc to Mr.R.Sreedhar, Advocate, Sr.No.23577.

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SPD(CO)
klt(21/05/2020)



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