

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12-05-2020

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Crl.A.No.220 of 2020
and Crl.M.P.No.3923 of 2020

Arul @ Arulpandian Appellant

Vs.

1. State Rep. by
Inspector of Police
Villianur Police Station,
Puducherry,

2. K.Innarasan

3. R.Lalitha

... Respondents

(R3 suo moto impleaded as per order of this
Court, dated 08.05.2020)

Criminal Appeal filed under Section 14 (A) (2) of SC/ST Act 1989, seeking to set aside the order passed by the learned II Additional Sessions Judge, Special Judge under SC/ST (POA) Act, Puducherry in Crl.M.P.No.14 of 2020, dated 22.04.2020 and enlarge the appellant on bail in Spl.S.C.No.01 of 2019.

For Appellant : Mr.Swami Subramanian

For Respondents : Mr.Bharatha Chakravarthy
Public Prosecutor (Puducherry) for R1
Mr.K.Nithyashree for R3

JUDGMENT

This Appeal arising out of the order passed by the learned II Additional Sessions Judge (Special Judge under SC/ST (POA) Act) Puducherry, by order, dated 22.04.2020 in Crl.M.P.No.14 of 2020.

2. Under the said order, the learned Judge rejected the bail application filed by the present appellant, in Spl.S.C.No.01 of 2019 on the file of the said Court, where the present appellant is the fifth accused.

3. Heard Mr.Swami Subramanian, learned counsel for the applicant, who would submit that, there are totally eight accused in this case, out of the eight, five are adults and three are Juveniles. In respect of three Juvenile accused are concerned, the case has been split up and it has been referred to the Juvenile Justice Board for trial.

4. In so far as the remaining adult accused are concerned, all other four adult accused except this appellant have already been released on bail. Among the four, in respect of three accused persons, i.e., A1, A2 and A3, namely Iyyanar @ Thadi Ayyanar (A1), Manikandan @ Katta Mani (A2) and Ajithkumar @ Chandru,

Appeals were filed similarly in Crl.A.Nos.289, 290 and 288 of 2019 respectively

and these appeals were heard by this Court by a learned Judge, who allowed the appeals, by order, dated 07.11.2019.

5. The learned counsel would also submit that, since A4 is concerned, he is also released on bail. Therefore the remaining adult accused, namely A5 alone has been in judicial custody since 17.07.2018. He would also submit that, the trial is in very advanced stage, where except three witnesses, all other witnesses were already examined on the prosecution side and all along this Appellant / A5 have been fully co-operating with the prosecution before the trial Court and if he is let on bail, he will abide by whatever conditions to be imposed strictly by this Court, to ensure his continuous co-operation in continuation of the trial, therefore he seeks this Court to allow this Appeal.

6. I have heard Mr.Bharatha Chakravarthy, learned Public Prosecutor appearing for the respondent police who would submit that, as submitted by the learned counsel for the appellant, there are eight accused, out of which five accused are adult accused and among the five, already four adult accused, except this appellant have been released on bail. In so far as the stage of the trial is concerned, out of 33 witnesses on behalf of the prosecution side, 31 witnesses have already been examined and remaining two IO's have to be examined.

7. However, Ms.K.Nithyasree, learned counsel appearing for the victim side, i.e., the mother of the victim who has already been impleaded in this appeal, by orders of this Court, dated 08.05.2020, would submit that, out of five adult accused, since four were released on bail, they cannot raise the ground to seek indulgence of this Court, in the present appeal for bail. The reason being, on behalf of the counsel that, all the accused are habitual offenders and in order to establish the same, the learned counsel for the victim side would submit that, A1, who was released on bail by this Court, even on coming out of bail involved in yet another crime and where also he has been arrested by the respondent State and therefore if this accused, who is also a habitual offender, would be released on bail, he may indulge in some more criminal activities, more over, he may escape from the clutches of law and in that case, it would be very difficult for the prosecution to complete the trial and therefore on these grounds, the learned counsel appearing for the victim side opposed this appeal.

8. I have considered the said submissions made by the learned respective counsels appearing for the parties and I have perused the materials placed before this Court.

9. As has been pointed out by the learned counsel for the appellant, out of the total five adult accused in this case, A1 to A4 have already been released on bail and A5, the present appellant is the only accused still in judicial custody.

10. In so far as the apprehension expressed by the learned counsel appearing for the victim side that if this accused is released on bail, either he may indulge in some more criminal activities or crime or he may escape from the clutches of law, the learned Public Prosecutor, on instructions, would submit that, A5 is not an habitual offender and there is no case record to that effect and in so far as A1 is concerned, it is true that, after releasing him on bail, he involved in other crime and he has been arrested.

11. The said factual matrix as well as the statements respectively made by the learned counsel for the parties would reveal the fact that, the present appellant / A5, according to the prosecution, is not a habitual offender. Moreover all other accused, i.e., A1 to A4 already been released on bail, as they all approached this Court by filing respective Appeals, where indulgence has been shown by this Court already.

12. In the order, dated 07.11.2019, a learned Judge of this Court, while considering the respective Appeals filed by A1, A2 and A3 has discussed the merits of the case and was inclined to let them on bail, ofcourse by imposing stringent conditions and in order to appreciate the same, the relevant portion of the order passed by the learned Judge, in the order, dated 07.11.2019 made in Crl.A.Nos.288,289 and 290 of 2019 are hereby extracted :

"9. The appellants are in jail from 16.07.2018 and that the crucial witnesses have been examined by the prosecution and only the official witnesses remain to be examined. Considering the facts and circumstances of the case and also considering the submissions of the learned counsel on either side, this Court is of the view that the appeals may be allowed and the appellants shall be enlarged on bail subject to stringent conditions. Accordingly the appellants/accused are ordered to be enlarged on bail, on the following conditions:-

a. the appellants/accused shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with two sureties each, out of which one shall be a blood relative for a like sum to the satisfaction of the learned Special Judge under Prevention of Atrocities Act, II Additional District & Sessions Judge, Puducherry.

b. The Petitioner/Accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

c. The appellants/Accused shall appear before the Trial Court on all working days at 10.30 a.m. without fail and on Saturdays and Sundays shall appear before the Orleanpet Police Station at 10:30 a.m., and shall not enter into the jurisdictional limits of Villianur Police Station.

d. the appellants shall not abscond during trial.

e. the appellants shall not tamper with evidence or witness during trial.

f. on breach of any of the aforesaid conditions, the learned trial Judge is entitled to take appropriate action against the appellants in accordance with law as if the conditions have been imposed and the appellants released on bail by the learned trial Judge himself as laid down by the Hon'ble Supreme Court in P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560]

g. if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC."

13. I have also considered the fact that, the trial is in advanced stage, where 31 out of 33 witnesses on the prosecution side have already been examined. All along the accused persons, including the present appellant seems to have given co-operation for the prosecution to complete the trial and in this regard, at least in respect of this appellant, there is no complaint whatsoever by the prosecution side.

14. Moreover this appellant has been in judicial custody from 17.07.2018, which is a longer period for an accused to be in judicial custody as a pre-trial prisoner.

15. Therefore taking into account, all these aspects, I am inclined to entertain this Appeal and I am of the view that this appellant can be released on bail, of course with similar conditions as has been imposed in respect of other accused by the learned Judge, in his order, dated 07.11.2019 referred to above and that apart, some more conditions may also be imposed, ensuring that the appellant is not escaping from the clutches of law and his being on bail would not hamper any way the steady progress of the trial before the trial Court.

16. In the result, this Criminal appeal is allowed and the appellant shall be

enlarged on bail subject to the following conditions :

- a.** the appellant/accused shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with two sureties each, out of which one shall be a blood relative for a like sum to the satisfaction of the learned Special Judge under Prevention of Atrocities Act, II Additional District & Sessions Judge, Puducherry.
- b.** The appellant/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.
- c.** The appellant/accused shall appear before the Trial Court on all working days at 10.30 a.m. without fail and on Saturdays and Sundays shall appear before the Orleanpet Police Station at 10:30 a.m., and shall not enter into the jurisdictional limits of Villianur Police Station.
- d.** the appellant shall not abscond during trial.
- e.** the appellant shall not tamper with evidence or witness during trial.
- f.** the appellant shall not leave the Metropolitan area of Puducherry.
- g.** apart from condition (c), the appellant should appear before the trial Court for every hearing

without any absence or filing any petition for dispensing with his absence in any hearing.

h. the appellant shall surrender the Passport, if any he is having before the trial Court.

i. on breach of any of the aforesaid conditions, the learned trial Judge is entitled to take appropriate action against the appellants in accordance with law as if the conditions have been imposed and the appellants released on bail by the learned trial Judge himself as laid down by the Hon'ble Supreme Court in P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560]

j. if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

With these conditions, this Criminal Appeal is ordered accordingly.

Consequently, connected Criminal Miscellaneous Petition is closed.

tsvn

WEB COPY

12-05-2020

Copy to :

1. The II Additional Sessions Judge /
Special Judge under SC/ST (POA).
Puducherry.
3. The Superintendent
Central Prison,
Puducherry.
4. The Inspector of Police
Villianur Police Station,
Puducherry,
- 5 . The Public Prosecutor
High Court of Madras,
Chennai.



WEB COPY

R.SURESH KUMAR, J.

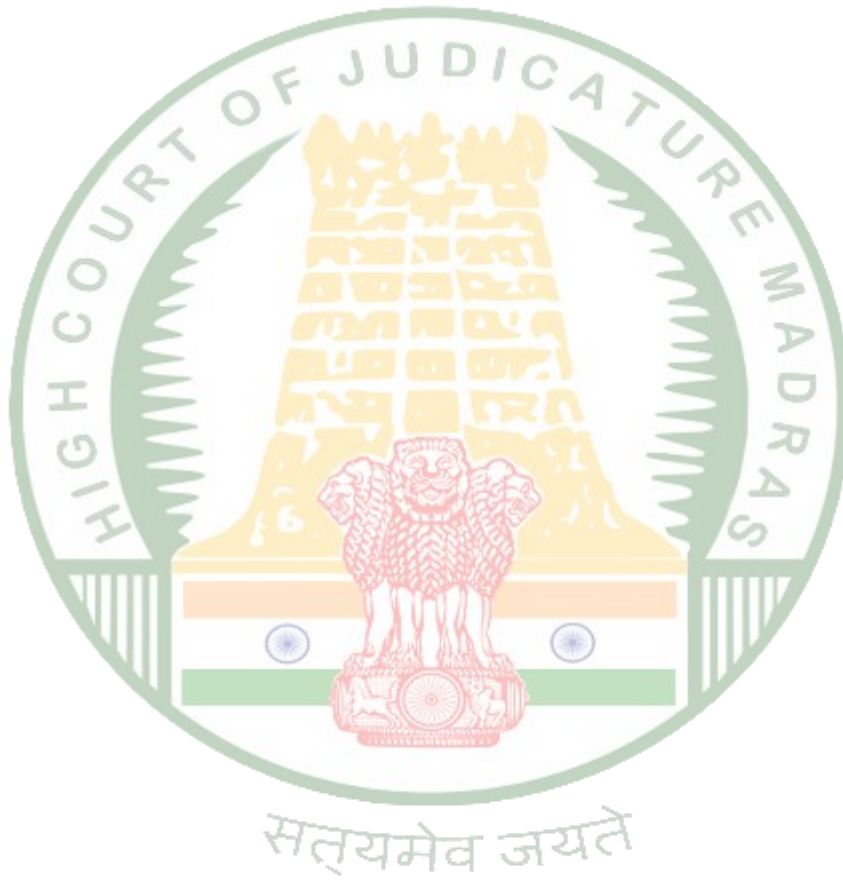
tsvn



Crl.A.No.220 of 2020

WEB COPY

12-05-2020



WEB COPY