

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.Nos.447 & 448 of 2020

1.Govindan
2.Venkatesh
3.Vishnu

... Appellants in Crl.A.No.447 of 2020

... Appellant in Crl.A.No.448 of 2020

Versus

1.State rep. by,
The Inspector of Police,
B-1 Police Station,
Dharmapuri District.
(Crime No.2126 of 2020).

2.Murugan

... Respondents in both cases

PRAYER in Crl.A.No.447 of 2020: Criminal Appeal filed under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989, to set aside the order passed in the Special Court of SC cum (ST Prevention of Atrocities) Court cum Fast Track Mahila Court at Dharmapuri in Crl.M.P.No.352 of 2020, dated 19.10.2020 and enlarge the appellants bail in Crime No.2126 of 2020 on the respondent Police.

PRAYER in Crl.A.No.448 of 2020: Criminal Appeal filed under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989, to set aside the order passed in the Special Court of SC cum (ST Prevention of Atrocities) Court cum Fast Track Mahila Court at Dharmapuri in Crl.M.P.No.350 of 2020, dated 19.10.2020 and enlarge the appellants bail in Crime No.2126 of 2020 on the respondent Police.

In Both Cases:

For Appellants : Mr.M.Selvam
For Respondent : Mr.C.Raghavan
Government Advocate [Crl. Side]
For R2 : Mr.A.M.Amutha Ganesh

COMMON JUDGMENT

Crl.A.Nos.447 & 448 of 2020 are filed against the orders dated 19.10.2020, made in Crl.M.P.Nos.352 & 350 of 2020, passed by the learned Special Judge for the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, Dharmapuri, dismissing the bail petitions.

2.The gist of the case is that on 18.09.2020 at about 11.30 p.m., the 2nd respondent has lodged a complaint to the 1st respondent that he is working as Mason and has two daughters and one son. His 2nd daughter is studying 10th std in Avvaiyar Government High Secondary School, Dharmapuri. At about 07.00 p.m., after completion of work when he returned to home, his 2nd daughter weeping. When he enquired, she informed that at about 06.00 p.m., when she was near the house, Vishnu, Devaraj, Govindan and Venkatesh of Kottaaimedu Village came in two wheeler, attempted to pinch her hip. At that time, one Manikandan was present, the accused fled away from the scene. Earlier to this occurrence, the accused constantly harassed and

intimidated the victim girl. Thus, the accused committed sexual harassment against the minor daughter of the 2nd respondent. Hence, an FIR in Crime No.2126 of 2020, for offence under Sections 12 r/w 11(1), 11(4) and 18 of the Protection of Children from Sexual Offence Act, 2012, was registered. During enquiry, it was found that the accused constantly followed the daughter of the respondent and was giving sexual harassment. The accused belong to Vanniyar Community and the victim girl belongs to Scheduled Caste Community. Knowing about her community status, the accused were indulging in such activities. Hence, the case was altered by including Sections 3(1)(w)(ii), 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities), Act, 1989 by alteration report dated 04.10.2020.

3.The learned counsel for the appellants submitted that the appellants in Crl.A.No.447 of 2020 were arrested on 19.09.2020 at about 10.00 a.m and the appellant in Crl.A.No.448 of 2020 was arrested on 11.10.2020. The learned counsel further submitted that the appellants are falsely implicated in this case, since the 2nd respondent conducted street play on the service road without permission which was objected by the appellants. Hence, there was animosity between the appellants and the 2nd respondent. Further, the appellants are not aware of the community of the 2nd respondent and they did

not utter any prohibitory words against him and the complaint is a motivated one. The learned counsel further submitted that later the 2nd respondent and his daughter realised their mistake, appeared before the lower Court and submitted that they have no objection for release of the appellants in bail.

4.The learned Additional Public Prosecutor appearing for the 1st respondent submitted that the appellants belong to Vanniyar Community, who are residing in a nearby village of the 2nd respondent. The victim girl, who is the minor daughter the 2nd respondent, is studying 10th std in Avvaiyar Government Higher Secondary School, Dharmapuri and she used to attend tailoring class and return back home at 06.00 p.m. At that time, the appellants used to accost the victim girl by giving sexual harassment. Initially, the victim girl did not inform the act of the appellants to her parents. Unable to withstand any further, she informed her father, who is a Mason. The 2nd respondent lodged a complaint to the 1st respondent Police. Taking advantage of the victim girl belonging to the Scheduled Caste community, the appellants had indulged in such activities. The 1st respondent Police, initially, registered a case under POCSO Act and thereafter, during investigation, the appellants commission of offence under the Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act,

was found and Section altered. Now, the investigation is still pending and opposed the bail.

5.The learned counsel for the 2nd respondent submitted that the 2nd respondent has got no objection to grant bail to the appellants. Infact, the 2nd respondent and the victim girl appeared before the lower Court submitted that they have no objection in grant of bail to the appellants.

6.On considering the rival submissions and on perusal of the materials, it is seen that there is some misunderstanding and motive between the appellants and the 2nd respondent, who conducted a street play, encroaching the road, which was objected by the appellants. Further, the 2nd respondent and his daughter appeared before the lower Court and submitted that they have no objection for grant of bail to the appellants. Thus, the entire complaint seems to have been given on misconception, which seems to have been later realised by the 2nd respondent. The learned counsel for the 2nd respondent confirms the same.

7.Considering the facts and circumstances of the case and also

considering the period of incarceration and finding the major part of the investigation is completed, this Court is inclined to grant bail to the appellants, subject to the following conditions:

- The appellants shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each within a period of 15 working days from the date of receipt of a copy of this order with two sureties each for a like sum to the satisfaction of the learned Special Judge for the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, Dharmapuri., failing which, the Criminal Appeals for bail shall stand dismissed and on further condition that;
- the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Judge may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;
- the appellants shall report before the respondent Police on every Saturday i.e., from 21.11.2020 at 10.30 a.m., until further orders.
- the appellants shall not commit any offences of similar nature;
- the appellants shall not abscond either during investigation or trial;
- the appellants shall not tamper with evidence or witness either during investigation or trial;
- on breach of any of the aforesaid conditions, the learned Judicial 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]***;

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

8.In view of the above, the orders dated 19.10.2020, made in Crl.M.P.Nos.352 & 350 of 2020 are set-aside. The Criminal Appeals are, accordingly, allowed.

18.11.2020

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

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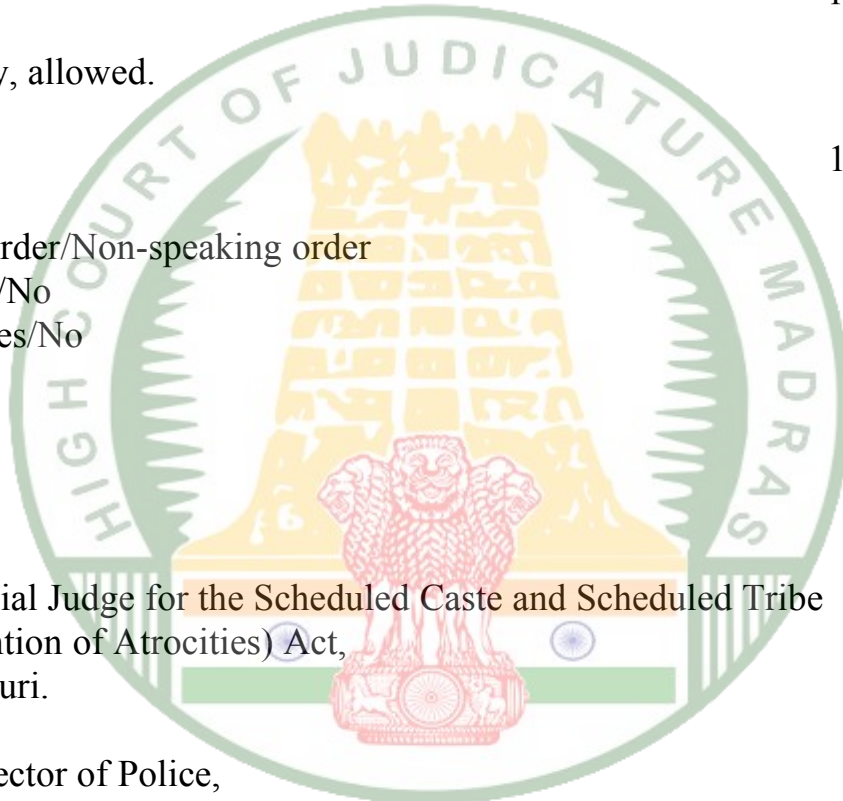
To

1.The Special Judge for the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, Dharmapuri.

2.The Inspector of Police,
B-1 Police Station,
Dharmapuri District.

3.The Superintendent,
Central Prison, Salem.

4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR.J.,

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