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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2022

CORAM:

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

CRL.A.NO.177 OF 2022

G.Chinnagoundar

... Appellant / A1

Vs.

1. The Deputy Superintendent of Police,
Omalur,
Salem District

2. State Rep. by
The Inspector of Police,
All Woman Police Station,
Omalur,
Salem District
(Crime No.29 of 2021)

3. Sridevi

... Respondents

PRAYER:

Criminal Appeal filed under Section 14A (ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as amended by Act 1/2016) to set aside the order passed by the learned Principal Sessions Judge, Salem dated 11.02.2022 in Crl.MP.No.587 of 2022 in Cr.No.29 of 2021 of All Woman Police Station, Omalur, Salem District and to enlarge the appellant on bail.

For Appellant : Mr.C.Deepak Kumar

For Respondents

For R1 & 2: Mr.Leonard Arul Joseph Selvam,
Government Advocate (crl.side)

For R3 : Mr.G.Mageshkumar



JUDGMENT

Being dissatisfied with the order dated 11.02.2022, made in CrI.MP.No.587 of 2022 on the file of the learned Principal Sessions Judge, Salem, the petitioner therein, who is the accused in Cr.No.29 of 2021 on the file of the The Inspector of Police, All Woman Police Station, Omalur, Salem District, preferred this appeal praying to set aside the order dated 11.02.2022 and to enlarge him on bail.

2. The case of the prosecution is that the appellant and the defacto complainant developed a relationship through facebook and the appellant by giving false promise, married the defacto complainant. Subsequently, the appellant refused to lead a married life with the defacto complainant. Further, the appellant is also having illegal relationship with many ladies. The other accused in this case, who is the brother of the petitioner, being Panchayat President, threatened the defacto complainant and later they received money and jewels from the defacto complainant. Further, the appellant and his brother abuses the defacto complainant by mentioning her caste name. However on 29.11.2021, the defacto complainant approached the appellant and requested to join with her for leading a happy matrimonial life, for which both the appellant and his brother threatened her with dire consequences. Hence the case.

3. The learned counsel appearing for the appellant would submit that the appellant by believing the words of the defacto complainant made arrangement for registering the marriage and only at that time, the defacto complainant told to him that she is a married girl and also having a child. The said information given by the defacto complainant reveal the fact that she only cheated the appellant. In otherwise, the defacto complainant filed a petition for dissolving the marriage in HMOP.No.102 of 2021 before the Principal Subordinate Court, Dharmapuri and the said petition is pending. Only after suppressing the said aspects, she attempted to marry the appellant. According to him, the appellant has not committed any offence as alleged in the F.I.R. The other accused who is arrayed as A2 in this case, was already granted bail. The appellant is in judicial custody from 28.01.2022 onwards. Hence, he prays for bail by allowing this appeal.

4. The learned Government Advocate (crl.side) appearing for the respondent police 1 & 2 has reiterated the facts of the case and submitted that the appellant is a constable working in Chennai and after knowing all the facts about the defacto complainant, married her. After solemnization of the marriage, by pointing out the community of the defacto complainant he



refused to lead a matrimonial life with the defacto complainant. Further, the brother of the appellant has threatened the defacto complainant and also abuses her by mentioning her caste name. Accordingly, he raised objection and prayed for dismissal of this appeal.

5. Notice was sent to the defacto complainant and later, she appeared before this Court along with G.Magesh Kumar, learned counsel. She raised objection stating that the appellant being the police constable, if he is released on bail, he may try to tamper the witness and hamper the investigation. It is her further submission that if the appellant is released on bail, it will endanger to her life. Hence, she prayed for dismissal of the appeal.

6. Submissions made by the counsels appearing on either side are considered.

7. The respondent police registered a case as against the appellant for the offence punishable under Sections 417, 420, 506(1) of IPC, Section 3(2)(va) of The Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. After registering the case, as of now, eleven witnesses have been examined and their 161 Cr.P.C. statements also recorded. Further, the appellant is in judicial custody from 28.01.2022 onwards. Therefore, in the said circumstances, it is not the case of prosecution that material objects are all necessary for completing the investigation has to be recovered through the accused. In otherwise, whether the appellant made a false promise or defacto complainant suppressed the entire facts as to the marriage, has to be decided only during the time of trial. In otherwise, in respect to grant of bail, the same cannot be considered as a reason to dismiss the appeal. Though the offence committed by the appellant is a heinous one, considering the period of incarceration and the stage of investigation, this court came to the conclusion that it is a fit case for allowing the appeal.

8. Accordingly, the order passed by the learned Principal Sessions Judge, Salem dated 11.02.2022 in CrI.MP.No.587 of 2022 is set aside and the appellant is enlarged on bail on the following conditions:

(a) the appellant is ordered to be released on bail on executing a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the Learned Judicial Magistrate Court, Omalur.



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(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) the appellant shall report before the Nagapattinam Town Police Station daily at 10.30 a.m. until further orders.

(d) the appellant shall not tamper with evidence or witness either during investigation or trial;

(e) 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];

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

9. With the above directions, this Criminal Appeal is allowed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge,
Salem.
2. The Judicial Magistrate Court,
Omalur.
3. Do-thro The Chief Judicial Magistrate,
Salem.



4. The Deputy Superintendent of Police,
Omalur,
Salem District.

5. The Inspector of Police,
All Woman Police Station,
Omalur,
Salem District.

6. The Inspector of Police,
Nagapattinam Town Police Station,
Nagapattinam.

7. The Superintendent,
Central Prison,
Salem.

8. The Public Prosecutor,
High Court of Madras.

Copy To

The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.C.Deepak Kumar, Advocate, S.R.No.18027
+1cc to Mr.G.Mageshkumar, Advocate, S.R.No.18028

Crl.A.No.177 of 2022

GMR(CO)
PM/22/03/2022