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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A. No.187 of 2022

Sathishkumar

... Appellant/Accused

vs.

1.State represented by
Deputy Superintendent of Police,
Salem District.

2.The Inspector of Police,
Omalur Police Station,
Salem District.

3.Sennammal
(Crime No.809 of 2021)

... Respondents

PRAYER: Criminal Appeal filed is filed under Section 14-A of Schedule Caste and Schedule Tribes (Prevention of Atrocities), Act, praying to set aside the order in Cr.M.P.No.88 of 2022 passed by the Principal Special Court for exclusive trial cases under POCSO Act, Salem dated 15.02.2022 and enlarge the petitioner/accused on bail.

For Appellant	:Ms.S.Premakumari
For Respondents 1 & 2	:Mr.Leonard Arul Joseph Selvam Government Advocate (Crl.Side)

For Respondent-3	:Mr.M.Prakash
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JUDGMENT

Being dissatisfied with the order dated 15.02.2022 made in Crl.M.P.No.88 of 2022, the appellant, who was the sole accused in Crime No.809 of 2021 on the file of the Omalur Police Station, Salem, has preferred this appeal and praying to enlarge him on bail.

2. The case of the prosecution is that on 02.11.2021, at the instance of the defacto complainant, the respondent police registered a case against the appellant in Crime No.809 of 2021 for the offence under Section Girl Missing altered to 363, 366(a) of I.P.C. and Sections 5(l) r/w. 6 of POCSO Act and



Section 3(2)(v) and Section 3(2)(va) of SC/ST Act. Later, on 27.11.2021, the victim girl has appeared before the respondent police and on enquiry, she has stated that the appellant/accused and herself were in love affair for more than a year and due to the same, on 04.10.2021, the appellant/accused came into the house of the victim girl and taking advantage of the fact that the victim girl was being alone in the house, has committed penetrative sexual assault upon the victim girl and repeated the same for many times. Subsequently, the appellant/accused has enticed and seduced the victim girl and thereby kidnapped her from her lawful guardianship by using van, bearing Registration No.TN-54-T-9588 to various places including other states. During such time also both the appellant/accused and the victim girl indulged in sexual activities repeatedly. Since, the victim girl is below the age of 18 years, the present case has been registered against the appellant.

3. The learned counsel for the appellant would submit that the appellant has not committed any offence as alleged by the prosecution and he has been falsely implicated in this case. He would further submit that the appellant is in incarceration from 27.11.2021 onwards and as of now, the investigation has been completed and charge sheet has also been filed before the trial Court. Hence, he prays for allowing this appeal and to enlarge the appellant on bail.

4. The learned Government Advocate (Crl. Side) appearing for the respondent/Police raised objection stating that the alleged offence committed by the appellant is heinous in nature. However, he admits that investigation in this case has been completed and charge sheet has also been filed before the trial Court.

5. The learned counsel appearing for the defacto complainant raised objection stating that if this type of appellant is released on bail, he may try to tamper the witnesses.

6. The submissions made by the learned counsel appearing on either side are considered.

7. Since the process of investigation has been completed in this case, further custody of the appellant is not necessary for completing the investigation. Further, the alleged occurrence had happened with the consent of the victim girl and the appellant is in the judicial custody from 27.11.2021 onwards. Further, it was reported that the appellant is not having any such previous antecedents.



8. Hence, taking note of all the above said aspects into consideration, particularly, considering the period of incarceration, this Court is inclined to grant bail to the appellant subject to certain conditions.

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9. Accordingly, the appellant is ordered to be released on bail subject to the following conditions;

(a) the appellant shall execute 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 Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Salem.

(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 appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m. and on every hearings.

(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.

In the result, the order passed by the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Salem in CrI.M.P.No.88 of 2022 dated 15.02.2022 is set aside and the Criminal Appeal is accordingly allowed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The Sessions Judge,
Special Court for Exclusive Trial of Cases
under POCSO Act, Salem.



2.The Deputy Superintendent of Police,
Salem District.

3.The Inspector of Police,
Omalur Police Station,
Salem District.

4.The Superintendent,
Central Prison, Salem.

5.The Public Prosecutor,
High Court, Madras.

6.The Hon'ble POCSO Committee,
High Court, Madras.

Crl.A. No.187 of 2022

RLD(CO)
KM(21/03/2022)