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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A.No.245 of 2022

P.Prabu,
S/o.Perumal

... Appellant/Accused

versus

1.The Assistant Commissioner of Police,
Hasthampatti Office,
Ammamet Range (North),
Salem District.

2.State Rep. by
Inspector of Police,
All Women Police Station,
Ammamet, Salem.
(Crime No.46 of 2021) .. Respondents 1 & 2/Complainant

3.Selvi,
D/o.Andhoni ... 3rd Respondent/Defacto complainant

Prayer: Criminal Appeal filed under Section 14-A(2) of the SC and ST (POA) Act, 1989, praying to set aside the order dated 22.02.2022 in C.M.P.No.716 of 2022 passed by the learned Principal Sessions Judge, Salem and enlarge the appellant on bail in Crime No.46 of 2021 on the file of the respondent police.

For Appellant : Mr.L.Mouli

For Respondent Nos.1&2 : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl. Side)

For Respondent No.3 : Mr.K.Sivakumar

J U D G M E N T

Being dissatisfied with the order dated 22.02.2022 made in C.M.P.No.716 of 2022 on the file of the learned Principal Sessions Judge, Salem, the appellant, who is the petitioner in the above referred petition, arrayed as an accused in Crime



No.46 of 2021 on the file of AWPS, Ammapet, has prepared this Criminal Appeal and praying to enlarge him on bail.

2. The case of the prosecution is that the de facto complainant and the appellant were loved with each other. They often met and indulged in a physical relationship. In fact, they were leading a family life as husband and wife. On 19.04.2021, the appellant told the de facto complainant that his marriage is going to be held on Thursday and also he refused to marry the de facto complainant and by using her caste name, abused and threatened her with dire consequences. Hence, this case.

3. The learned counsel appearing for the appellant would submit that the appellant is an innocent person and he has been falsely implicated in this case. He would further submit that the allegation levelled against the appellant had happened with the consent of the de facto complainant. In fact, after she raised objection, the proposal to marry some other girl by the appellant was dropped. Previously, for the same occurrence, in the year 2003 itself, the father of the de facto complainant lodged a complaint as against the appellant and after completing enquiry, the said case has ended in acquittal. Now, after suppressing all those aspects, the present case has been registered. Further, the appellant is in judicial custody from 03.02.2022 onwards. Hence, he prayed for bail by allowing this appeal.

4. The learned Government Advocate (Crl. Side) appearing for the respondent police raised objection stating that, if the appellant is released on bail, he may try to tamper the witness. However, he admits that during the time of investigation, all the evidences, which are all necessary for proving the alleged occurrence, had been collected by the police and now, the investigation is pending for awaiting the report from the Forensic Department.

5. The learned counsel for the de facto complainant would submit that, only after knowing the caste name, the appellant, refused to marry the de facto complainant and therefore, the offence committed by the appellant, is heinous one. However, he fairly conceded that the alleged offence of rape has been committed by the accused with the consent of the de facto complainant. Further, he has not denied the registration of the earlier case for the same occurrence.

6. Considered the submissions made by the learned counsel appearing on either side.



7. Admittedly, the de facto complainant, who is aged about 34 years, knows the consequence of every act committed by her. In the complaint itself, she admitted that only with her consent, the appellant had indulged in sexual relationship. Further, in the present case, the main allegation levelled against the appellant is that, he refused to marry her. In otherwise, in respect of other offence, she conceded that everything had happened with her consent. In the said circumstances, the appellant is in judicial custody from 03.02.2022 and as of now, a portion of investigation has been completed. Further, the appellant is having a permanent residence and therefore, the question of abscondance does not arise.

8. Therefore, taking into consideration of the fact that the appellant is in incarceration from 03.02.2022, this Court is inclined to grant bail to the appellant subject to following conditions.

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 Principal Sessions Judge, 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 is directed to appear before the Inspector of Police, Dindigul North Police Station, daily at 10.00 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.



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

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

- 1.The Principal Sessions Judge, Salem.
- 2.The Assistant Commissioner of Police,
Hasthampatti Office,
Ammamet Range (North),
Salem District.
- 3.The Inspector of Police,
All Women Police Station,
Ammamet, Salem.
- 4.The Inspector of Police,
Dindigul North Police Station.
- 5.The Superintendent of Prison,
Central Prison, Salem.
- 6.The Public Prosecutor,
High Court, Madras.

Crl.A.No.245 of 2022

NRL (CO)
A.SK(23/03/2022)