



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2022
CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A.No.227 of 2022

Nallathambi

...Appellant/Accused

Vs.

1. The Deputy Superintendent of Police,
Kangeyam Sub Division,
Tiruppur District.

2. The State rep. by
The Inspector of Police,
All Women Police Station,
Kangeyam,
Tiruppur District.
(Crime No.3 of 2016)

..1st & 2nd Respondents/Complainant

3. A.Priya

...3rd Respondent/Defacto Complainant

PRAYER: Criminal Appeal filed under Section 14(A) (2) of the SC/ST Act, 1989, to set aside the order dated 11.02.2022 made in Crl.M.P.No.326 of 2022 passed by the learned Principal and Sessions Judge, Tiruppur and to allow this Criminal appeal and enlarge the appellant on bail.

For Appellant : Ms.R.Shase

For Respondents

For R1 & R2 : Mr.Leonard Arul Joseph Selvam,
Government Advocate(Crl. Side)

For R3 : Mr.J.Franklin

JUDGMENT

Being dissatisfied with the order dated 11.02.2022 made in Crl.M.P.No.326 of 2022 on the file of the learned Principal Session Judge, Tiruppur, the appellant, who is arrayed as Accused No.3, in Crime No.3 of 2016 on the file of the All Women Police Station, Kangeyam, Tiruppur District, has preferred this appeal and praying to enlarge him on bail.



2. The case of the prosecution is that during the relevant point of time, the other two accused who are arrayed as A1 and A2, misbehaved with the victim girl who belongs to SC/ST community and ultimately committed an offence of rape. During such time, upon the information given by the second accused, the appellant who is working as Reporter in a daily news paper, published the news as against the defacto complainant and also published the obscene photographs of the victim.

3. Therefore, the respondent police registered a case and after concluding the investigation, filed final report alleging that the petitioner and other two accused have committed an offence under Sections 294(b), 376, 354(A), 341, 506(i) of IPC r/w 3(1)(w)(i) r/w 3(2)(v)(a) of SC/ST (POA) Amendment Act, 2014 & Section 4 Tamil Nadu Prohibition of Women Harassment Act.

4. Later after the receipt of final report, the same has been assigned with case number as Spl.S.C.No.6 of 2019 on the file of the learned Principal District & Sessions Judge, Tiruppur, however the appellant herein has not appeared, by responding to the summons issued by the Court below. Therefore, a Non-bailable warrant has been issued against him and as per the order passed by our Hon'ble Apex Court in S.L.P.(Crl)No.791 of 2022 dated 04.02.2022, he surrendered before the trial Court on 11.02.2022 and thereafter he was remanded to the judicial custody.

5. Only in the said occasion, he filed an application under Section 439 of Cr.P.C., before the learned Principal Session Judge, Tiruppur and the same has been dismissed by an order dated 11.02.2022. Challenging the same, the appellant is before this Court by way of filing this present Criminal Appeal.

6. The learned counsel for the appellant would submit that the appellant is an innocent person and no way connected with the offence as alleged by the prosecution. She would further submit that except to publish the news which was given by the other accused, the petitioner is no way connected with the alleged offence. The petitioner is in judicial custody from 11.02.2022 onwards and therefore, she prays for bail by allowing this appeal.

7. The learned Government Advocate (Crl. Side) appearing for the respondent/Police raised objection stating



WEB COPY

that if the appellant is released on bail, he may try to tamper the witnesses. However he fairly admits that the appellant is in judicial custody from 11.02.2022 and as of now the case has been posted for framing charges. He prayed for dismissal of this appeal.

8. Under Section 15(A) of the SC/ST Prevention of Atrocities Act, notice has been served to the defacto complainant and Mr.J.Franklin, learned counsel appeared on behalf of the third respondent/defacto complainant. He would contend that after knowing the fact that the other accused in this case have committed the heinous offence, the appellant herein published the false news, which amounts to defame the character of the defacto complainant. Hence, he prayed to dismiss the above Criminal Appeal.

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

10. On going through the copy of the final report filed by the respondent police, it has been stated about the role played by the accused as during the relevant point of time, the appellant published the defamatory news as against the defacto complainant. In other wise, there is no averment as the appellant herein has committed an offence of rape. It is not in dispute that the case is posted before the trial Court for framing charges. Therefore, the question of custodial interrogation is not at all necessary for further proceedings. In other wise, the trial Court without considering those aspects dismissed the bail application filed by the appellant, which is erroneous in law. More than that, the appellant is in judicial custody for the past two months.

11. Taking into consideration the nature of the offence committed by the appellant and particularly, considering the period of incarceration, this Court is inclined to grant bail to the appellant subject to following conditions.

12. 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 Session Judge, Tiruppur.

(b) the sureties shall affix their photographs and Left Thumb Impression in the



WEB COPY

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 report before the second respondent police, on every Monday 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.

13. In the result, the order passed by the learned Principal Session Judge, Tiruppur, in Crl.M.P.No.326 of 2022 dated 11.02.2022 is set aside and the Criminal Appeal is accordingly allowed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rts

To

1. The Principal Session Judge, Tiruppur.
2. The Deputy Superintendent of Police,
Kangayam Sub Division,
Tiruppur District.
3. The Inspector of Police,
All Women Police Station,
Kangayam,
Tiruppur District.



4. The Superintendent,
Central Prison,
Coimbatore.

5. The Public Prosecutor,
High Court, Madras.

6. The District Collector
Coimbatore

7. The Director General of Police
Mylapore, Chennai

Copy to

The Section Officer
Criminal Section
High Court, Madras 104.

+1 CC to Mr.M. Guruprasad, Advocate sr 25217.

Cr1.A.No.227 of 2022

NRL (CO)
SP (13/04/2022)