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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A. No.264 of 2022

S.Raji

... Appellant

vs.

1.The Deputy Superintendent of Police,
Thiruvannamalai Rural Sub Division,
Thiruvannamalai District.

2.The State rep. by
The Inspector of Police,
Thanipadi Police Station,
Thanipadi.
Tiruvannamalai District.

3.Muneeswaran

... Respondents

PRAYER: Criminal Appeal filed is filed under Section 14(A) of Schedule Caste and Schedule Tribe (Prevention of Attrocities) Act, 1989 praying to set aside the order dated 24.01.2022 made in Crl.M.P.No.30 of 2022 passed by Special Court for Exclusive Trial of Cases under POCSO Act, Tiruvannamalai and enlarge the appellant on bail in Crime No.2/2022 on the file of the 2nd respondent police.

For Petitioner : Mr.B.Jawahar

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

For Respondent-3 : Mrs.D.Geetha

JUDGMENT

Being dissatisfied with the order dated 24.01.2022 made in Crl.M.P.No.30 of 2022 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Tiruvannamalai, the appellant, who is arrayed as Accused No.1 in Crime No.2 of 2022 pending on the file of the Thanipadi Police Station, has preferred this appeal praying to set aside the order dated 24.01.2022 and to enlarge him on bail.



2. The case of the prosecution is that the appellant, who was working as driver under the defacto complainant had developed love affairs with the younger daughter of the defacto complainant. It is the further case of the prosecution that in the month of December, 2021, the appellant herein brought the victim girl to Tiruvannamalai, wherein he committed penetrative sexual assault on the victim girl. Further, on 31.12.2021, he instructed the victim girl to come to the Higher Secondary School at Thanipadi and later both were eloped by using the vehicle bearing Registration No.TN-25-BM-1563 and stayed in a house, which belongs to Delli Ganesh, wherein also, the appellant committed penetrative sexual assault over the victim girl. Hence, a case has been registered against the appellant and other accused under Girl Missing @ Sections 4, 5(1), 6 of POCSO Act, 2012 and Section 3(2)(va) of SC/ST POA Act.

3. The learned counsel for the appellant would contend that both the appellant and the defacto complainant are lovers and after knowing the consequences of everything, they decided to marry. Further they eloped from their respective houses. Now, after securing the accused, 164(5) Cr.P.C. Statement has also been obtained and the appellant is in judicial custody from 05.01.2022. The trial Court without considering those aspects, refused to grant bail to the appellant. Hence, the appellant is before this Court with this present appeal.

4. The learned Government Advocate (Crl. Side) appearing for the respondent police would submit that investigation in this case has been completed and after completing the investigation, final report has also been submitted before the trial Court. However, he opposed to allow this appeal.

5. The learned counsel appearing for the defacto complainant would submit that though she has filed vakalat on behalf of the defacto complainant, she has not received any instructions from the defacto complainant.

6. In the said circumstances, now on considering the submissions made by the learned counsels appearing on either side, the averment found in the complaint as well as in the statement recorded under Section 161 Cr.P.C. from the victim girl, would disclose the fact that both the victim girl and the appellant fell in love with each other. Admittedly, while at the time of occurrence, the victim girl was aged about 17 ½ years. Further, she is studying first year B.A. Tamil Literature in Bharath Vidya Mandir College, Thandarampet. Though it was stated by the victim girl that she was compelled for sexual intercourse, the same has to be decided during the time of



trial. As of now, the investigation in this case has been completed and charge sheet has also been filed before the concerned Court. Further, the appellant is in the judicial custody from 05.01.2022.

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7. Therefore, taking into consideration all the above aspects and also considering the nature of the offence committed by the appellant, this Court is inclined to grant bail to the appellant subject to following conditions.

8. 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, Tiruvannamalai;

(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 trial Court (Special Court for Exclusive Trial of Cases under POCSO Act, Tiruvannamalai) 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.

In the result, the order passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Tiruvannamalai, in Crl.M.P.No.30 of 2022 dated 24.01.2022 is set aside and the Criminal Appeal is accordingly allowed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar



rsi

To

- 1.The Sessions Judge, Special Court for
Exclusive Trial of Cases under POCSO Act,
Tiruvannamalai.
- 2.The Deputy Superintendent of Police,
Thiruvannamalai Rural Sub Division,
Thiruvannamalai District.
- 3.The Inspector of Police,
Thanipadi Police Station,
Thanipadi.
Tiruvannamalai District.
- 4.The Superintendent,
Central Prison, Vellore.
- 5.The Public Prosecutor,
High Court, Madras.
- 6.The Hon'ble POCSO Committee,
High Court, Madras.

Crl.A. No.264 of 2022

KV(CO)
SB(29/03/2022)