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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A.No.379 of 2022

Pandiyaraj ... Appellant/Accused

vs.

1.The Deputy Superintendent of Police,
Kottakuppam Division,
Villupuram District

2.The State Rep. by
The Station House Officer,
All Women Police Station,
Kottakuppam,
Villupuram District

... Respondent/Complainant

3.Amutha ... Defacto Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 14-A(2) of the Schedule Castes and the Schedule Tribes (Prevention of Atrocities) Act, 1989 praying to set aside the order passed in Crl.M.P.No.492 of 2022 dated 24.03.2022 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Villupuram, Villupuram District and enlarge the appellant on bail in Crime No.6 of 2022 on the file of the second respondent police.

For Appellant : Mr.E.Kannadasan
for Mr.M.Machavatharan

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

For Respondent-3 : Mrs.Amutha (party in person)

JUDGMENT

Being dissatisfied with the order dated 24.03.2022 made in Crl.M.P.No.492 of 2022, on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Villupuram, the appellant, who is the accused in



Crime No.6 of 2022 on the file of All Women Police Station, Kottakuppam, has preferred this appeal praying to set aside the above said order dated 24.03.2022 and to enlarge him on bail.

2. The case of the prosecution is that the defacto complainant is the mother of the victim child. On 22.02.2022 around 8.00 p.m., while at the time the victim child was in Thiruvakkarai Perumbakkam main road, the appellant herein came there in two wheeler and after threatening the victim child as he is going to murder the parents of the victim child, compelled and brought her to some other place. Later, he torn the shirt owned by the victim child and after pulling her hands, bite the victim child and also he gave kiss to her. Hence, the 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 due to the previous enmity, the defacto complainant lodged a false complaint against this appellant and later, after registering the case, he is in the judicial custody from 24.02.2022. The trial court without considering those aspects, dismissed the petition filed by the appellant and therefore, the appellant is before this Court.

4. The learned Government Advocate (Crl. Side) appearing for the respondent/Police raised objection stating that investigation is pending. However he admits that as of now, statement under Section 164 of Cr.P.C. has been recorded from the victim child and also both the accused and the victim child subjected to the medical examination.

5. Notice under Section 15A of the SC/ST Act has been served to the defacto complainant and later, on 12.04.2022, while at the time this appeal was posted for hearing, the defacto complainant brought to this Court by one, R.Devi, Head Constable of All Women Police Station, Kottakuppam. While at the time of enquiry, the defacto complainant was deposed that her daughter often got headaches, and later due to the reason that she was fell into the water, she was died. However, she gave no objection for enlarging the appellant on bail.

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

7. The respondent police registered a case as against the appellant for the offence punishable under Sections 366, 323, 354(A), 506(i) of IPC r/w Section 8 of POCSO Act, 2012 subsequently altered into Sections 366, 323, 354(A), 506(i) of IPC and Section 8 of POCSO Act, Sections 3(1)(w)(i), 3(2)(va) of Schedule Castes and Schedule Tribes (Prevention of Atrocities)



Act, 2015. As of now, portion of investigation has been completed. Further, the appellant is in the judicial custody from 24.02.2022 onwards. The defacto complainant has not raised any objection in allowing this appeal. Further, both the accused and the victim child already subjected into medical examination. Moreover, the appellant is not having any previous antecedents.

8. Therefore, taking into consideration of all the above said aspects, particularly on considering the period of incarceration, this Court is inclined to grant bail to the appellant by allowing this criminal appeal.

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, Villupuram, Villupuram District

(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 second respondent police 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, Villupuram, Villupuram District in Crl.M.P.No.492 of 2022 dated 24.03.2022 is set aside and the Criminal Appeal is accordingly allowed.

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Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

- 1.The learned Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act,
Villupuram, Villupuram District
- 2.The Deputy Superintendent of Police,
Kottakuppam Division,
Villupuram District
- 3.The Station House Officer,
All Women Police Station,
Kottakuppam,
Villupuram District
- 4.The Superintendent,
District Prison, Villupuram
- 5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Machavatharan, Advocate SR.No.25571

Crl.A.No.379 of 2022

VBM(CO)
GMY(13/04/2022)