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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.06.2022

PRONOUNCED ON: 05.07.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

Crl.A.(MD)No.357 of 2022

Kannan : Appellant/Petitioner/Sole Accused

Vs.

1.State represented by its
The Deputy Superintendent of Police,
Srivilliputtur,
Virudhunagar District.

2.The Inspector of Police,
All Women Police Station,
Virudhunagar,
Virudhunagar District.

: Respondents/Respondents/Complainant

PRAYER : Criminal Appeal has been filed under Section 14A(2) SC & ST (Prevention of Atrocities) Amendment Act, 2015, to set aside the order dated 26.04.2022, passed in Cr.M.P.No.476/2022, on the file of the learned Sessions Judge, Special Court for trial of SC/ST (POA) Act Cases, Virudhunagar District at Srivilliputtur and to release the petitioner on bail in connection with Crime No.05 of 2022, on the file of the Inspector of Police, All Women Police Station, Virudhunagar, Virudhunagar District.



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For Appellant : Mr.B.Jeyakumar

For Respondents : Mr.B.Nambi Selvan
Additional Public Prosecutor
for R.1

: Mr.P.Ganapathi Subramanian
Legal Aid Counsel for R.2

JUDGMENT

This Criminal Appeal has been filed, invoking Section 14A(2) SC & ST (Prevention of Atrocities) Amendment Act, 2015, seeking orders to set aside the order dated 26.04.2022, passed in Cr.M.P.No.476/2022, on the file of the learned Sessions Judge, Special Court for trial of SC/ST (POA) Act Cases, Virudhunagar District at Srivilliputtur and to release the petitioner on bail in connection with Crime No.05 of 2022, for the offences under Sections 376(2)(n), 417, 506(i) I.P.C., and Sections 3(1)(w)(i), 3(2)(v) of SC/ST(POA) Act, 1989 on the file of the Inspector of Police, All Women Police Station, Virudhunagar, Virudhunagar District.

2. The case of the prosecution is that the victim belongs to Pallar Community, that the petitioner belongs to Veerakudi Vellalar Community, that the petitioner is working as a Constable in the Armed Reserve of Virudhunagar District, that the victim girl got acquaintance with the petitioner through face book and the said acquaintance developed into love affair, that the petitioner had



promised to marry the victim girl and moved closely with her, that he had taken her to his quarters at Virudhunagar and had sexual relationship with her, that when the victim asked the petitioner to marry her, the petitioner had threatened, that thereafter the victim girl came to know that the petitioner was already married and had children, that the victim girl, meanwhile got conceived and requested the petitioner to marry her and that since the petitioner had refused, the above complaint was lodged. It is the further case of the prosecution that the petitioner was arrested on 02.04.2022, that he gave a voluntary confession statement and on that basis, they have recovered certain materials and that the investigation is pending.

3. After the receipt of Court notice, since the defacto complainant/victim has appeared in person and represented that she was not having sufficient means to engage a Counsel, this Court directed the Registry to take steps for appointment of Legal Aid Counsel and accordingly, Legal Aid Counsel was appointed.

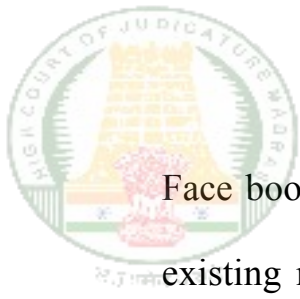
4. Heard Mr.B.Jeyakumar, learned Counsel for the petitioner, Mr.B.Nambi Selvam, learned Additional Public Prosecutor appearing for the State and Mr.P.Ganapathi Subramanian, learned Legal Aid Counsel for the defacto complainant and perused the materials placed on record.



5. The learned Counsel for the petitioner would submit that the petitioner's family and the defacto complainant's family were moving as friends and the defacto complainant lodged the complaint against the petitioner only at the instigation of her close relatives and that even according to the prosecution, it is not the case of having sex forcibly with the victim. The learned Counsel for the petitioner would further submit that the defacto complainant was fully aware of the fact that the petitioner was already married and had children and that since it is a case of consensual sexual relationship, the same cannot be treated as rape.

6. The learned Additional Public Prosecutor appearing for the State would submit that the petitioner was already married and is having children, that the petitioner should have shown restraint, even if there was a close relationship between him and the victim and that the defacto complainant who conceived, got aborted and it has been sent for DNA grouping test.

7. The learned Counsel for the defacto complainant has also raised serious objections for granting bail. He would further submit that the petitioner, being a member of the police force, there is every possibility of indulging in tampering the witnesses and evidences. According to the prosecution, the parents of the victim girl are not alive and that she got acquaintance with the petitioner through



Face book. He would further submit that the petitioner, without disclosing his existing marriage and children, he had sexual relationship with the victim by completely suppressing the same.

8. It is pertinent to mention that the Hon'ble Supreme Court in ***Uday Vs. State of Karnataka*** reported in ***2003(4) SCC 46***, has specifically observed that when the accused knows that he is giving a false promise, at the very inception, that he has no intention to marry her at all, however, the victim believed his promise be true and in that belief, she had consented for sexual intercourse, then she gave her consent only on misconception of fact and in those circumstances, it will amount to rape.

9. Considering the seriousness and gravity of the offence alleged and also the fact that the petitioner is in judicial custody only from 02.04.2022 and the investigation is pending as stated by the learned Additional Public Prosecutor appearing for the State and also taking note of the fact that the petitioner had suppressed his first marriage and children he had and that the petitioner being a member of police force, there is every possibility of indulging in tampering the witnesses and evidences as stated by the learned Counsel for the complainant and the learned Additional Public Prosecutor, this Court is not inclined to grant bail to the petitioner at this point of time.



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10. In the result, the Criminal Appeal is dismissed.

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Index : Yes/No

Internet : Yes/No

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Special Court for trial of SC/ST (POA) Act Cases,
Virudhunagar District at Srivilliputtur.
2. The Deputy Superintendent of Police,
Srivilliputtur,
Virudhunagar District.
2. The Inspector of Police,
All Women Police Station,
Virudhunagar,
Virudhunagar District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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PRE-DELIVERY ORDER MADE IN

Crl.A.(MD)No.357 of 2022

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