



Crl.A(MD)No.719 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2022

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)No.719 of 2022

C.Kannan

... Appellant

Vs.

1.The Deputy Superintendent of Police,
Periyakulam Sub Division,
Periyakulam,
Theni District.

2.The Inspector of Police,
Thenkarai Police Station,
Theni District.

... Respondents 1 & 2/Complainants

3.Eswari

... 3rd Respondent/Defacto Complainant

Prayer : This Appeal is filed under Section 14A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Amendment Act 1 of 2016, to set aside the order dated 03.11.2022 made in Crl.M.P.No. 1142/2022 in Crime No.392 of 2022 on the file of the learned Sessions Judge, Special Court for trial of the cases under SC/ST (POA) Act, Theni and enlarge the petitioner on bail.



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For Appellants : Mr.C.Jeganathan
For Respondents : Mr.RMS.Sethuraman for R1 & R2
Additional Public Prosecutor
Mrs.S.Mahalakshmi for R3

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J U D G M E N T

This Criminal Appeal has been filed against the order dated 03.11.2022 made in Crl.M.P.No.1142/2022 in Crime No.392 of 2022 on the file of the learned Sessions Judge, Special Court for trial of the cases under SC/ST (POA) Act, Theni and enlarge the petitioner on bail.

2.The case of the prosecution in brief:

The defacto complainant lodged a complaint stating that she belongs to the Scheduled caste community and she was married to one Mariappan. Some 6 years back, a male child was born to them. She was affected by HIV virus. After the death of her husband, she was undergoing treatment in Theni Government College Hospital. She was working as a labour under the accused, who is a mason by profession. During the month of January she was subjected to sexual intercourse forcibly by the accused person. Stating that he has videographed the above said incident, she was repeatedly subjected to sexual intercourse. Therefore, she is now eight months pregnant. When she contacted the accused and requested him to



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marry her, he criminally intimidated and abused her by calling her caste name. On that basis the complaint has been given by the victim and the case was registered, the accused was arrested and remanded into judicial custody. Seeking bail, the accused moved the Special Court, which came to be dismissed by the order dated 03.11.2022. Against which, this criminal appeal has been preferred.

3.The learned counsel for the petitioner would submit that absolutely there is no possibility of any sexual contact between the accused person and the defacto complainant, since both the defacto complainant and her husband were affected by HIV virus and the defacto complainant has also taking treatment; In this circumstances, if the accused was having any sexual contact with her, then he would also have been affected with HIV Virus; Taking advantage of the fact that the appellant is a mason and she was also working under him, to grab money, a false case has been given and even before the police station, there was a threat and force to give money to settle the issue.

4.Perusal of the CD file shows that for about 8 months they were in contact with each other and the allegation that taking advantage of the



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position, she was subjected to frequent sexual assault. The contention on the part of the petitioner that he was not affected by HIV, which shows the innocence cannot be the matter for consideration at this stage. Now the investigation is under process and it was informed the Court that twins were born to the defacto complainant and statement of the witnesses has also been recorded under Section 164 of Cr.P.C. by the concerned Magistrate. The appellant was also subjected to medical examination. But the DNA profiling test will only reveal the truth. The learned counsel for the appellant submit that he is also ready to undergo DNA profiling test. Since the investigation is in the preliminary stage and if the petitioner is enlarged on bail, there is every likelihood of making threat to the victim and tampering the evidence.

5.The learned counsel for the appellant would further submit that in the facts and circumstances of the case as per the Judgment of the Honourable Delhi High Court in the case of ***Danish Khan @ Saahil Vs. State (Government of NCT of Delhi)***, offence under Special Act will not be attracted. Whether taking advantage of the community the above said act has been committed or not is also matter for investigation and this fact cannot be taken into account at this stage. Even if the offence under the Special Act is not attracted, the offence under Section 376 IPC is serious in nature, which



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requires a thorough investigation. As pointed out earlier, DNA profiling test only will reveal the truth.

6.Considering the seriousness of the allegation, the bail that was moved by the petitioner came to be dismissed by the Special Court. So no new ground has been made out by the appellant in this appeal. I find no reason to enlarge the petitioner on bail at this stage. This appeal deserves to be dismissed.

7.Accordingly, this criminal appeal is dismissed.

18.11.2022

Index : Yes/No
Internet : Yes/No

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To

- 1.The Sessions Judge, Special Court for Trial of SC / ST (PoA) Act Cases, Theni District.
- 2.The Deputy Superintendent of Police, Periyakulam Sub Division, Periyakulam, Theni District.
- 3.The Inspector of Police, Thenkarai Police Station, Theni District.
- 4.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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