

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.A.No.144 of 2023

Suriyamoorthi

... Appellant

Vs.

1. The Deputy Superintendent of Police,
Seerkali Taluk, Mayiladuthurai District.

2. The State: rep. by the Inspector of Police,
Pagasalai Police Station, Nagapattinam District,
Crime No.2 of 2018.

3. Rajkumar

... Respondent

PRAYER: Criminal Appeal filed under Section 14(A)(2) of SC/ST (POA) Act, 1989 to set aside the order dated 11.01.2023 passed by the Principal District and Sessions Judge, Nagapattinam in Crl.M.P.No.162 of 2023 in Spl.S.C. No.22/2019 and enlarge the appellant on bail.

For Appellant

: Mr.K.C.Karl Marx

For Respondents 1 & 2

: Mr.C.E.Pratap
Govt. Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal has been filed challenging the order dated 11.01.2023 passed by the learned Principal District and Sessions Judge, Nagapattinam in Crl.M.P.No.162 of 2023 in Spl.S.C. No.22/2019 and enlarge the appellant on bail.

2. The respondent police registered a case in Crime No.2/2018 against the appellant for the offence punishable under Sections 147, 148, 294(b), 323, 324 & 506(ii) IPC r/w Sec.3(l)(r), 3(l)(s), 3(2)(va) of SC/ST (POA) Act. After completion of investigation, the investigating officer filed a final report and it was taken on file as Spl.S.C.No.22/2019 by the learned Principal District and Sessions Judge, Nagapattinam. The appellant filed a petition in Crl.M.P.No.162 of 2023 to grant bail to him and the same was dismissed by the above said Judge, vide order dated 11.01.2023. Challenging above said order, this criminal appeal has been filed.

3. The learned counsel for the appellant submitted that, the appellant has been falsely implicated in this case. He further submitted that, the appellant went to abroad for his job in the year 2019 and he could not return back to India due to lock down and he returned to India only on 04.01.2023. He also submitted due to non appearance of the appellant, NBW was issued against him and he was arrested on 04.01.2023. The counsel further submitted that, the appellant is not aware of the pendency of Non Bailable Warrant against him and hence, the impugned order may be set aside the appellant may be granted bail.

4. The learned Government Advocate (Crl.Side) appearing for the respondents 1 and 2 submitted that, after investigation, final report filed in Crime No.2/2018 and it was taken on file as Spl.S.C.No.22/2019 by the learned Principal District and Sessions Judge, Nagapattinam. He further submitted that, the appellant is in judicial custody from 04.01.2023.

5. Despite notice has been served to the third respondent and his name is printed in cause list, no representation for the third respondent and none appeared on behalf of him.

5. Heard the learned counsel for the appellant and the learned Government Advocate (Crl.Side) appearing for the respondents 1 and 2 and perused the materials on record.

6. A perusal of the records shows that the a case in Crime No.2/2018 war registered against the appellant for the offence punishable under Sections 147, 148, 294(b), 323, 324 & 506(ii) IPC r/w Sec.3(l)(r), 3(l)(s), 3(2)(va) of SC/ST (POA) Act and after filing final report, it was taken on file as Spl.S.C.No.22/2019 by the learned Principal District and Sessions Judge, Nagapattinam. The bail petition in Crl.M.P.No.162 of 2023 filed by the appellant was dismissed by the above said Judge and challenging the same, this , vide order dated 11.01.2023. Challenging above said order, this criminal appeal has been filed.

7. The records further reveals that already the appellant was granted bail and due to his non appearance before the Trial Court, Non Bailable Warrant was issued against him. It is the contention of the appellant that, the appellant went abroad for his job and he returned back to India only on 04.01.2023. The learned Judge observed in his impugned order that the appellant had breached the bail conditions and the long pendency of the case is only due to his absconding and hence considering the serious nature of offence, dismissed the bail petition. However, considering the nature of offence and the period of incarceration suffered by the appellant and also taking into account the fact that already final report filed and it was taken on file and pending as Spl.S.C.No.22/2019, this Court is inclined to grant bail to the appellant with some conditions.

8. Accordingly, this Criminal Appeal is allowed by setting aside the impugned order dated passed in Crl.M.P.No.162/2023 in Spl.S.C. No.22/2019, and bail is granted to the appellant with the following conditions.

(i) The appellant is directed to be enlarged on bail on condition that 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 District and Sessions Judge, Nagapattinam.*

(ii) the appellant and the sureties shall affix their photographs and left thumb impression in the surety bond and the Court concerned may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(iii) the appellant shall not tamper with evidence or witness either during investigation or trial;

(iv) the appellant shall report before the Trial Court, as and when required by the Trial Court.

(v) the appellant shall not abscond during trial;

(vi) on breach of any of the aforesaid conditions, the learned Trial Judge is entitled to take appropriate action against the appellant in accordance with law as if the conditions has been imposed and the appellant

released on bail by the learned Trial Judge himself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560]***; and;

(vii) if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

27.02.2023

Note: Issue order copy on 28.02.2023
mst

To

1. The Principal District and Sessions Judge, Nagapattinam.
2. The Jailor, Nagapattinam District Jail.
3. The Public Prosecutor, High Court of Madras, Chennai.

Crl.A.No.144 of 2023

V.SIVAGNANAM, J.,

mst

Crl.A.No.144 of 2023

27.02.2023