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CrI.A.No.209 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2023

CORAM

THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

CrI.A.No.209 of 2023

Sivashankar

... Appellant

Vs.

1. The State Represented by
The Deputy Superintendent of Police,
Salem, Salem District.

2. State rep by its
The Inspector of Police,
Hastampatti Police Station,
Salem District
(Crime No.11 of 2023)

3. C.Gowsalya

... Respondents

PRAYER : Criminal Appeal has been filed under section 14A (2) of SC & ST (Prevention of Atrocities) Amended Act, to set aside the order made in CrI.M.P.No.302 of 2023 dated 30.01.2023 passed by the learned Principal Sessions Judge, Salem and to enlarge the petitioner on bail by allowing the appeal.



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For Appellant : Mr.S.Bharanidharan

For Respondents 1 and 2 : Mr.A.Gokulakrishnan
Additional Public Prosecutor,

For Respondent-3 : Mr.Ali Hassan Khan

ORDER

This Criminal Appeal has been filed praying to set aside the order passed by the learned Principal Sessions Judge, Salem dated 30.01.2023 in Crl.M.P.No.302 of 2023 and enlarge the petitioner on bail.

2.The learned counsel for the appellant has submitted that the 2nd respondent Police registered a case against the accused 1 and 2 on 11.01.2023 in Crime No.11 of 2023 for the alleged offences under Sections 376(2), 376(2)(a), 376(2)(b), 376(2)(d), 376(2)(n) I.P.C r/w Sec.3(1)(w)(i) and Section 3(2)(v) of SC/ST(POA) Act and Section 66E of INFC, 2008 in pursuant to the complaint given by one Gowsalya/the 3rd respondent herein. He further submitted that the allegation against the appellant / accused-1 that he had sexual intercourse with the victim and recorded the videos is a



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false one. The 2nd respondent Police verified the cell phones of the accused and the victim and got report from the Forensic Department. There is no such obscene images or videos of the victim with the accused available in the cell phones. Hence, the learned counsel prays for grant of bail to the appellant/Accused-1.

3.Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor appearing for the respondents 1 & 2 objected for grant of bail to the appellant/Accused-1, but conceded that on verification of the cell phones of the accused as well as the victim, no file was found containing any obscene videos.

4.Heard Mr.S.Bharanidharan learned counsel for the appellant, Mr.A.Gokulakrishnan, learned Additional Public Prosecutor for respondents 1 and 2 and Mr.Ali Hassan Khan, learned counsel for respondent-3.



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5.I have considered the submissions made by the learned counsel appearing for the respective parties and perused the entire materials placed on record.

6.On perusal of the records, the fact reveals that upon a complaint given by the 3rd respondent herein / defacto complainant, viz., Gowsalya, the 2nd respondent Police registered a case against the accused persons in Crime No.11 of 2023 for the offences under Sections 376(2), 376(2)(a), 376(2)(b), 376(2)(d), 376(2)(n) of I.P.C r/w Sec.3(1)(w)(i) and Section 3(2)(v) of SC/ST(POA) Act and Section 66E of INFC, 2008. On perusal of the F.I.R, it is noticed that the victim has stated that the first incident took place in the month of June 2022 and further, she has stated that she has waited for the accused persons at 10.30p.m at the place requested by the accused persons to get the key from them and went to the accused house and stayed there. At that time, the alleged incident took place and this incident happened repeatedly for over days. For all these occasions, the victim has voluntarily



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went to the quarters of the accused. Further, considering the fact that on verification of the cell phones of the accused as well the victim, no file was found containing the obscene images or videos of the victim along with the accused.

7.Considering the nature of allegation levelled against the appellant / accused-1 and also the fact that in the absence of any obscene images or videos of the victim along with the accused found in the cell phones of the accused and the victim, I am inclined to grant bail to the appellant/Accused-1 with the following conditions:

(i) The appellant/accused-1 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 Sessions Judge, Salem.

(ii) The appellant/accused-1 and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Trial



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Court 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 2nd respondent Police on every Monday at 10.30.am until further orders.**

(v) the appellant shall not abscond either during investigation or trial;

(vi) on breach of any of the aforesaid conditions, the learned Magistrate/ Trial Court 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 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]***; and;

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

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Index: Yes/No
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V.SIVAGNANAM, J.,

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