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CRL.A.NO.550 OF



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.A.NO.550 OF 2023

C.Vijayakumar

... Appellant

Vs.

The State rep by its

1.Superintendent of Police
Salem District.

2.The Inspector of Police
Panamarathupatti Police Station
Salem District.
Crime No.02/2023

3.Kalaiyarasi

... Respondents

PRAYER: Criminal Appeal filed under Section 14A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 r/w. Amended Act 2015 to set aside the order in Cr.M.P.No.1155/2023 passed by the Principal Sessions Judge, Salem, dated 27.04.2023 and enlarge the petitioner / accused on bail.

For Appellant : Ms.S.Premakumari

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

For Respondent 3 : Mr.G.Munuraj

JUDGMENT



This Criminal Appeal has been preferred by the appellant against the dismissal order dated 27.04.2023 passed in Crl.M.P.No.1155 of 2023 by the learned Principal Sessions Judge, Salem and to release him on bail.

2.The learned counsel for the appellant submitted that the second respondent police registered a case against the appellant in Crime No.2 of 2023 for the offences punishable under Sections 302 IPC r/w 3(1)(r), 3(1)(s) and 3(2)(va) of ST / ST (POA) Act in pursuance of a compliant given by the wife of the deceased Iyyappan on 05.01.2023. Initially, a case has been registered under Section 174 Cr.P.C., and subsequently, the same was altered into Section 302 IPC. There is no eyewitness to the alleged occurrence. He further submitted that there is no specific overtact against the appellant in the complaint and his name has not been mentioned in the FIR. But he was arrested and remanded to judicial custody on 20.02.2023. Since there is no specific overtact against this appellant, he has to be released on bail. However, the Trial Court has failed to consider the same and dismissed the petition filed for grant of bail. The said order is under challenge in this Criminal Appeal.

3.The learned Additional Public Prosecutor for the respondents 1 and 2 fairly submitted that in this case, there is no eye witness, direct evidence



to connect the accused to the crime, but there are only circumstantial evidence available. He further submitted that the wife of the accused had illicit relationship with the deceased, which is the strong motive and in order to wreck vengeance, the appellant / accused murdered the deceased, which is supported by the post-mortem report, wherein the Doctor had opined that *“the deceased would appear to have died of asphyxia due to compression of neck and consumption of profuse poisoning with ethyl alcohol”*. Under these circumstances, there is a strong circumstantial evidence against the appellant and hence, he strongly objected to grant bail to the appellant and pleaded to dismiss the present appeal.

4.The learned counsel for the third respondent / defacto complainant supported the arguments of the learned Additional Public Prosecutor and submitted that there is a land dispute between the accused and the deceased and hence, there is a strong motive for the commission of offence by the accused / appellant. Hence, he strongly opposed to enlarge the appellant on bail.

5.I have considered the submissions made on either side and perused the materials available on record.



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6. On perusal of the records and FIR and other materials, the facts reveals that the second respondent police registered a case against the appellant in Crime No.2 of 2023 for the offences punishable under Sections 302 IPC r/w 3(1)(r), 3(1)(s) and 3(2)(va) of ST / ST (POA) Act in pursuance of a compliant given by the wife of the deceased Iyyappan on 05.01.2023. In the said complaint, it is alleged that on 05.01.2023 at about 02.30 pm., the defacto complainant was informed by one Kandhasamy that her husband Iyyappan was found lying in the agricultural land of one Chinnapaiyan and she immediately went to the place and found her husband died and also found an empty GENESIS pesticides bottle near his body. Immediately, he was taken to the hospital and subsequently, she lodged a complaint before the second respondent police. The post-mortem report reveals that *“the deceased would appear to have died of asphyxia due to compression of neck and consumption of proseros poisoning with ethyl alcohol”*. Under these circumstances, it is clear that the deceased was murdered. But, in this case, there is no eye witness and no direct evidence and the prosecution relied upon only circumstantial evidence against the accused / appellant and also the deceased had illicit relationship with the wife of the accused / appellant. Apart from this, there is some land dispute between the accused and the deceased family. In the absence of any direct



evidence and also the fact that the prosecution had relied upon only circumstantial evidence and the accused is in custody from 20.02.2023, I am inclined to grant bail to the appellant.

7. Accordingly, the impugned order dated 27.04.2023 passed in CrI.M.P.No.1155 of 2023 by the learned Principal Sessions Judge, Salem, is hereby set aside and bail is granted to the appellant and the appellant is ordered to be released on bail on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each, for the like sum before the learned Judicial Magistrate No.1, Salem.

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

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

(c) the appellant is directed to appear before the Trial Court on the first working day of every month at 10.30 am until further orders.



WEB COPY

CRL.A.NO.550 OF



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

(e) on breach of any of the aforesaid conditions, the 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 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;

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

7. With the above directions, this Criminal Appeal is allowed.

06.06.2023

Internet : Yes/No
TK

To

1. The Principal Sessions Judge
Salem.



2. The Superintendent of Police
Salem District.

3. The Inspector of Police
Panamarathupatti Police Station
Salem District.

4. The Public Prosecutor
High Court of Madras.

5. The Superintendent
Central Jail
Salem.



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V.SIVAGNANAM, J.

TK

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