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Crl.A.No.554 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.06.2023

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THE HONOURABLE Mr. JUSTICE V. SIVAGNANAM

Crl.A.No.554 of 2023

Naresh

... appellant

Vs.

1. The State, represented by
the Commissioner of Police,
Office of the Commissioner of Police,
Avadi, Chennai.
2. The State, represented by
the Inspector of Police,
Sholavaram Police Station,
Redhills, Tiruvallur District.
3. Sakthivel

... Respondents

Criminal Appeal filed under Section 14(A)(1) of SC/ST Act, r/w.374 (2) of Cr.P.C., to allow the criminal appeal and set aside the order passed in Crl.M.P.No.1688 of 2023 by the Principal District and Sessions Judge, Tiruvallur, Tiruvallur District, dated 26.04.2023 consequently, to enlarge the appellant on bail, pending investigation in Crime No.141 of 2023 on the file of the Inspector of Police, Sholavaram Police Station, Tiruvallur District.

For appellant : Mr. M. Gangatharan

For Respondents : Mr.A.Gokulakrishnan, APP
for R1
Mr.K. Senthilkumar for R2



JUDGMENT

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This Criminal Appeal has been filed challenging the order passed in Crl.M.P.No.1688/2023, dated 26.04.2023 by the Principal District and Sessions Judge, Tiruvallur, Tiruvallur District and to allow the appeal and to enlarge the appellant on bail, pending investigation in Cr.No.141 of 2021, on the file of the 2nd respondent police.

2. The facts leading to filing of this Criminal Appeal are as follows;

(i) Based on a complaint given by the defacto complainant stating that his son Praveen Kumar was missing since 20.02.2023, a case was registered by the 2nd respondent in Cr.No.141 of 2023 for the offence under section 'Man Missing'.

(ii) Thereafter, on 22.02.2023, on the basis of the statement given by the defacto complainant that his son's dead body was found in Nallur Selliamman Temple Pond and in the head of the dead body, there were bleeding injuries, the section of the case was altered from 'Man Missing' to 302 IPC.



(iii) On enquiry, as it was found from the statement of one Rajendran that while the said Rajendran and the deceased were going near Selliamman Temple, the appellant wrongfully restrained the said Rajendran and the deceased and attacked them with reaper wooden log indiscriminately, due to which, the deceased sustained injuries on his head, hand and cheeks.

(iv) Pursuant to which, the appellant was prosecuted by the respondent police after altering the offence from section 302 IPC to sections 341, 294(b), 324, 302 IPC. Thereafter, on enquiry, it was found that since the deceased is belonging to Hindu Adi Dravidar Community, the sections were further altered to sections 341, 294(b), 324, 302 IPC r/w.3(2)(v) of SC/ST (POA) Act.

(v) Pending investigation, the appellant filed Cr.M.P.No.1688 of 2023 before the Principal District and Sessions Judge, Tiruvallur, who, by the order dated 26.04.2023, dismissed his bail petition considering the facts that the offence is grave in nature and investigation is still pending.

(vi) Aggrieved over the dismissal of his bail petition, the appellant has filed the present Criminal Appeal seeking to set aside the impugned order and enlarge him on bail.

3. The learned counsel for the appellant submitted that the respondent police initially registered a case in Cr.No.141 of 2023 for the offence under section 'man missing', subsequently, after recording the statement of one



alleged eye witness Rajendran, the offence has been altered into sections 341, 294(b), 324, 302 IPC and thereafter, again the sections of the offence were altered to sections 341, 294(b), 324, 302 IPC r/w.3(2)(v) of SC/ST (POA) Act. The accused/appellant was arrested on 22.02.2023 and from that date, he was under judicial custody. He further contended that as per the allegation, on 22.02.2023, the deceased was found dead in Nallur Chelliamman Temple Pond. The alleged eye witness- Rajendran, though stated that in the alleged incident, he also sustained injuries, he did not immediately appear before the respondent police and disclosed the above fact, but only on 23.02.2023, at 10.00 a.m., he appeared before the police and disclosed the facts. Thereafter, the case has been altered as stated above and the respondent began to believe the said Rajendran as a true person, who may be a real culprit and prosecuted the appellant. He further submitted that the appellant is an innocent person he has been wrongly roped in the case and the appellant is ready to cooperate for trial. Thus, he pleaded that the appellant may be enlarged on bail.

4. The learned Additional Public Prosecutor appearing for the respondents 1 and 2 submitted that in this case, originally a complaint has been received on 22.02.2023, based on which, a case has been registered for the offence under section 'man missing'. Subsequently, after recording the evidence of Rajendran on 23.02.2023, the sections of the case has been altered



into sections 341, 294(b), 324, 302 IPC r/w.3(2)(v) of SC/St (POA) Act and further investigation has been conducted. The appellant/accused was arrested and remanded to judicial custody. He would further submit that now the investigation has been completed and Forensic Report is awaited and after receiving the same, final report will be filed. Thus, he objected for granting bail.

5. The learned counsel appearing for the 3rd respondent/defacto complaint objected for granting bail to the appellant by contending that there is a threat to the 3rd respondent/defacto complainant by the appellant/accused

6. Heard both sides and perused the impugned order and other material evidence placed on record.

7. On a perusal of FIR and other documents, it is noticed that initially a complaint was given on 22.02.2023 and a case was registered in Cr.No.141 of 2023 under section 'man missing'. On 23.02.2023, one Rajendran appeared before the respondent police at 10.00 am., and disclosed about the alleged incident and the involvement of the appellant/accused in the same and in the occurrence, the abovesaid Rajendran has also sustained injuries. Thereafter, the appellant/accused was arrested on 23.02.2023. Taking into consideration of



the fact that investigation has been completed and awaiting forensic report and the nature of the allegation levelled against the appellant and the period of detention already undergone by the appellant, this court is inclined to grant bail to the appellant.

8. Accordingly, the impugned order dated 26.04.2023 passed in Crl.M.P.No.1688 of 2023 by the Principal District and Sessions Judge, Tiruvallur, is set aside and bail is granted to the appellant and the appellant is ordered to be released on bail on executing a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each, before the learned Judicial Magistrate No.II, Ponneri on the following conditions;

(a) 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;

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

(c) the appellant shall appear before the trial court on the first working day of every month until further orders.



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

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(e) 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 have 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;

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

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

12.06.2023

msr

Index:Yes/No

Internet:Yes/No

To

- 1.The Principal District and Sessions Judge, Tiruvallur,
2. The Judicial Magistrate No.II, Ponneri
3. The Commissioner of Police,
Office of the Commissioner of Police,
Avadi, Chennai.
4. The Inspector of Police,
Sholavaram Police Station,
Redhills, Thiruvallur District.
5. The Public Prosecutor, High Court, Madras.
6. The Superintendent, Puzhal Prison II, Chennai.



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V. SIVAGNANAM, J.

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