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Crl.A.No.557 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.06.2023

CORAM

THE HONOURABLE Mr. JUSTICE V. SIVAGNANAM

Crl.A.No.557 of 2023

Mukesh

... Appellant

Vs.

1. State, represented by
Deputy Superintendent of Police,
O/o.Deputy Superintendent of Police,
Mayiladuthurai.
2. Inspector of police,
Sirkazhi Police Station,
Mayiladuthurai District.
(Cr.No.542 of 2022)
3. Kavitha

... Respondents

Criminal Appeal filed under Section 14 A(2) of Schedule Caste and Schedule Tribes Act, 1989 to set aside the order passed by the Principal District and Sessions Judge./Special Court for SC/ST Act, Nagapattinam in Crl.M.P.No.1492/2023 , dated 21.04.2023 and enlarge the appellant /accused on bail in connection with Cr.No.542 of 2022, on the file of the Inspector of Police, Sirkazhi Police Station, Mayiladuthurai District.

For Appellant : Mr. C.T.Saravanan

For Respondents : Mr. A. Gokulakrishnan for R1 & R2
R3- Notice served, no appearance



JUDGMENT

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This Criminal Appeal has been filed challenging the order passed in Crl.M.P.No.1492 of 2023, dated 21.04.2023 by the Principal District and Sessions Judge/Special Court for SC/ST Act Nagapattinam in and by which, the learned Principal District and Sessions Judge has dismissed the bail application filed by the appellant under section 167 Cr.P.C.

2. The learned counsel appearing for the appellant contended that the respondent police registered a case against the appellant along with other accused and the appellant is arrayed as 7th accused in Cr.No.542 of 2023 for the offences punishable under section 302 IPC. Pursuant to which, the appellant/A7 was arrested on 27.12.2022 and remanded to judicial custody. On 27.03.2023, the respondent police again altered the offences punishable under sections 147, 148, 302, 120(B), 342, 427, 294(b), 506(ii), 34, 115 of IPC r/w.3(2) (va) 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018. After the expiry of statutory period of 90 days, the respondent police, has not filed a final report, hence the appellant filed statutory bail application before the trial court. He further submitted that though in the impugned order, the trial Judge recorded



that charge sheet was not filed by the respondent police, he dismissed the statutory bail application on the ground that the appellant was first remanded in SC/ST court only on 13.04.2023. The reason assigned by the trial judge in dismissing the statutory bail is not sustainable and not supported by any law. Therefore, the impugned order is liable to be set aside. Stating so, he prayed for allowing the appeal and enlarge the appellant on bail.

3. The learned Addl. Public Prosecutor appearing for the respondents 1 and 2 submitted that initially the respondent police registered a case in Cr.No.542 of 2023 against eight persons under section 302 IPC and the appellant is arrayed as A7. Pending investigation, the respondent police altered the offences to sections 147, 148, 302, 120(B), 342, 427, 294(b), 506(ii), 34, 115 of IPC r/w.3(2) (va) 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018 on 27.03.2023 and the appellant was inside jail from 27.12.2022. The allegation against the appellant is that he along with other accused scolded and assaulted the deceased who belongs to Scheduled Caste Community by calling his caste name and committed murder of the deceased. Thus he objected for granting bail to the appellant. However, he fairly conceded that charge sheet was filed only on 28.04.2023 after passing of the impugned order.



4. Though notice served on the 3rd respondent and her name being printed in the cause list, there is no appearance for her either in person or through counsel today, when the matter is called.

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

6. On a perusal of records, it is seen that initially, the respondent police registered a case against the appellant along with other persons in Cr.No.542/2022 for the offence punishable under section 302 IPC and the appellant was remanded to judicial custody on 27.12.2022. Thereafter, on filing alteration memo on 27.03.2023, the offences were again altered under sections 147, 148, 302, 120(B), 342, 427, 294(b), 506(ii), 34, 115 of IPC r/w.3(2) (va) 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018. Though the offences were altered as stated above on 27.3.2023, it is seen that final report was not filed by the respondent police within the statutory period of 90 days from the date of arrest of the appellant i.e., on 27.12.2022. The trial court failed to consider this aspect and dismissed the petition seeking statutory bail. In the considered



view of this court, the reason assigned by the trial court is unsustainable.

Therefore, the appellant is entitled for statutory bail.

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7. In view of the foregoing discussions, the impugned order passed by the Principal District and Sessions Judge/Special Court for SC/ST Act, Nagapattinam in Crl.M.P.No.1492 of 2023, dated 21.04.2023 is set aside.

8. Accordingly, Statutory 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 Principal District and Sessions Judge/Special Court for SC/ST Act, Nagapattinam on the following conditions;

(a) 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;



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(c) the appellant to appear before the trial court on the first working day of every month at 10.30 a.m., until further orders.

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

(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 appellant/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./Special Court for SC/ST Act, Nagapattinam.
- 2.The Deputy Superintendent of Police,
O/o.Deputy Superintendent of Police,
Mayiladuthurai.
3. The Inspector of police,
Sirkazhi Police Station,
Mayiladuthurai District.
- 3.The Public Prosecutor, High Court, Madras.
4. The Superintendent, District Jail,
Nagapattinam.



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V. SIVAGNANAM, J.

msr

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