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Crl.A.No.1217 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.06.2023

CORAM

THE HONOURABLE Mr. JUSTICE V. SIVAGNANAM

Crl.A.No.1217 of 2022

Ravikumar

... Appellant

Vs.

1. The Deputy Superintendent of Police,
Trichy Road, near Collectorate Office,
Namakkal District.
2. State by
Inspector of Police,
All Women Police Station,
Rasipuram,
Namakkal
Cr.No.18 of 2021
3. Sarathy
Legal cum Protection Officer,
District Child Protection Officer
Unit, Namakkal District
4. Tmt.Sagayamary
(R-4-impleaded as per the order
of the court made in Crl.M.P.No.
71/2023 by order dated 17.3.2023
and name amended as per order
of this Court in Crl.M.P.No.6243
of 2023 dt.28.4.2023.

... Respondents

Criminal Appeal filed under Section 14A(2) of SC/ST POA Act, 1989
amended in 2016) to set aside the order in Crl.M.P.No.1198/2022 dated
7.10.2022 by the Sessions Judge (Fast Track Mahila Court) at Namakkal and to



allow the appeal and to enlarge the appellant on bail in connection with the case in Cr.No.18 of 2021 on the file of the respondent police.

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For Petitioner : Mr. M. Saravanakumar

For Respondents : Mr.A.Gokulakrishnan, APP
for R1 and R2
R3- notice served, none appeared

JUDGMENT

This Criminal Appeal has been filed challenging the order passed in order in Crl.M.P.No.1198/2022, dated 7.10.2022 by the Sessions Judge (Fast Track Mahila Court) at Namakkal and to allow the appeal and to enlarge the appellant on bail in connection with the case in Cr.No.18 of 2021 on the file of the respondent police.

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

(i) The appellant was prosecuted by the respondent police, based on a complaint given by one Sarathy, Legal cum Protection Officer, District Child Protection Officer Unit, Namakkal District in Cr.No.18 of 2021 for the offences punishable under sections 5(1), 5(j)(ii), 5(n) r/w.6 of POCSO Act, 2012 and 3(i)(w)(i) of SC/ST POA Act.



(ii) It was alleged in the complaint that the petitioner has committed aggravated penetrative sexual assault on the victim girl aged 13 years, due to which, she became pregnant.

(iii) Pursuant to which, the case has been charge sheeted and taken on file in Spl.C.C.No.36 of 2022 by the Sessions (Fast Track Mahila) Judge, Namakkal and the appellant was arrested and remanded to judicial custody on 01.01.2022.

(iii) The appellant filed Cr.M.P.No.1198 of 2022 in Spl.C.C.No.36 of 2022 before the Sessions (Fast Track Mahila) Judge, Namakkal, who, by the order dated 07.10.2022, dismissed his bail petition considering the gravity of the offence alleged.

(iv) Aggrieved over the dismissal of his bail petition, the petitioner 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 appellant was arrested on 1.1.2022, pursuant to the complaint given by one Sarathy, Legal cum Protection Officer, District Child Protection Officer Unit, Namakkal District in Cr.No.18 of 2021 for the offences punishable under sections 5(1), 5(j)(ii), 5(n) r/w.6 of POCSO Act, 2012 and 3(i)(w)(i) of SC/ST POA Act. The



victim girl and the appellant have love affair with each other and despite their love affair, the mother of the victim girl, gave the complaint. During the course of trial, the victim girl deposed before the Court that she had love affair with the appellant/accused and had sexual intercourse. In the circumstances, 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 the case is pending trial and so far witnesses PW1 to PW12 have been examined and the case is posted for taking Doctor's evidence and other official witnesses. Thus, he objected for granting bail. However, he fairly conceded that the victim, who was examined as PW1 had deposed before the trial court that she had love affair with the appellant and had sexual intercourse with him.

5. Though notice was served on the 3rd respondent/defacto complainant and her name being printed in the cause list, there is no representation for her either in person or through counsel.

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



7. Perusal of records would reveal that in Spl.C.C.No.36 of 2022, the trial has been commenced and 12 prosecution witnesses have been examined and the case is posted for further examination of official witnesses viz., Doctor and Investigation Officer. Further, the victim girl had deposed before the trial court that she had love affair with the appellant/accused and had sexual intercourse with him. Thus, considering the nature of the offence and the period of detention undergone by the appellant, I am inclined to grant bail to the petitioner.

8. Accordingly, the impugned order dated 07.10.2023 passed in Crl.M.P.No.1198 of 2022 by the learned Sessions (Fast Track Mahila) Judge, Namakkal, 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 Sessions (Fast Track Mahila) Judge, Namakkal 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;



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

(c) the appellant shall appear before the trial court as directed by the trial court and cooperate for trial;

(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 petitioner in accordance with law as if the conditions have been imposed and the petitioner 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.

09.06.2023

msr

Index:Yes/No

Internet:Yes/No



To

1. The Sessions (Fast Track Mahila) Judge, Namakkal
2. The Deputy Superintendent of Police,
Trichy Road, near Collectorate Office,
Namakkal District.
3. The Inspector of Police,
All Women Police Station,
Rasipuram,
Namakkal
4. The Public Prosecutor, High Court, Madras.
5. The Superintendent, Central Prison,
Salem



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V. SIVAGNANAM, J.

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