

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 06.04.2023

CORAM

THE HONOURABLE MR. JUSTICE K.MURALI SHANKAR

Crl. A.(MD)No.235 of 2023

Abishek

... Appellant/Petitioner/Rank
Not Known

Vs.

1.The Deputy Superintendent of Police,
Kudavasal,
Thiruvarur District.

2.The Inspector of Police,
Kudavasal Police Station,
Thiruvarur District.
(Crime No.33 of 2023)

... 1st & 2nd Respondents/
Complainants

3.Mathiyalagan

... 3rd Respondent/Defacto
Complainant

Prayer : This Criminal Appeal is filed under Section 14A(2) of of Scheduled Caste / Scheduled Tribes Act, 1989 as amended by Act 1 of 2016, to call for the records pertaining to the order dated 16.03.2023 in Crl.M.P.No.127 of 2023 on the file of I Additional District and Sessions Judge (PCR), Thanjavur and to set aside the same and enlarge the appellant on bail in connection with Crime No.33 of 2023 on the file of the first respondent herein by allowing this criminal appeal.

For Appellant : Mr.A.Arun Prasad
For R1 & R2 : Mr.R.Sivakumar
Government Advocate (Crl. Side)
For R3 : Mr.T.R.Subramanian
Legal Aid Counsel

JUDGMENT

This Criminal Appeal is directed against the order passed in Crl.M.P.No.127 of 2023 dated 16.03.2023 by the learned I Additional District and Sessions Judge (PCR), Thanjavur.

2. The case of the prosecution is that due to previous enmity between the accused 1 to 7 and one Kaviyarasan, on 31.01.2023, the accused 1 to 7 had murdered the said Kaviyarasan. Hence, the third respondent, who is the father of the deceased lodged a complaint and on that basis, FIR came to be registered against seven named persons and some others in Crime No.33 of 2023 for the offences under Sections 147, 148, 341, 294(b) and 302 IPC and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

3. The learned counsel appearing for the appellant would submit that the appellant is innocent and he has not committed any offence as alleged by the prosecution. He would further submit that the appellant's name does not find place in the FIR and subsequently, on the basis of the confession alleged to have taken from the co-accused, the appellant was implicated.

4. The learned Government Advocate (Criminal Side) appearing for the respondents 1 and 2 would submit that in the confession statement of the co-accused Kalidass, it has been stated that after the occurrence, the appellant has allegedly given accommodation to the co-accused. He would further submit that the appellant is not having any previous cases.

5. The learned counsel appearing for the third respondent has raised objections to grant bail to the appellant.

6. As rightly contended by the learned counsel appearing for the appellant, even according to the prosecution, the appellant was not present at the time of the alleged occurrence and there is no specific overt act alleged against the appellant in the occurrence.

7. Considering the above facts and circumstances and also the facts that the appellant is in judicial custody from 01.02.2023, that the appellant is not having any previous cases for similar offence or serious offence and that there is no specific overt act against the appellant, this Court is inclined to allow the Criminal Appeal by setting aside the order, dated 16.03.2023 made in Crl.M.P.No.127 of 2023 on the file of the learned I Additional District and Sessions Judge (PCR), Thanjavur.

8. Accordingly, the Criminal Appeal is allowed and the order dated 16.03.2023 made in Crl.M.P.No.127 of 2023 on the file of the learned I Additional District and Sessions Judge (PCR), Thanjavur, is set aside. The appellant is ordered to be released on bail on his executing 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 I Additional District and Sessions Judge (PCR), Thanjavur, and on further conditions that:

[a]the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Sessions Judge may obtain a copy of their valid identity card to ensure their identity.

[b]the appellant shall stay at Trichy and report before the Inspector of Police, Cantonment Police Station, Trichy for a period of one month daily at 10.30 a.m. and thereafter appear before the respondent police daily at 10.30 a.m., until further orders.

[c]the appellant shall not tamper with evidence or witness either during investigation or trial.

[d]the appellant shall co-operate with the investigation.

[e]On breach of any of the aforesaid conditions, the learned Sessions Judge/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 Sessions Judge/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**.

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

06.04.2023

NCC : Yes/No
Index : Yes/No

Internet : Yes/No
csm

K.MURALI SHANKAR, J.

csm

To

- 1.The Superintendent,
Central Prison,
Trichy.
- 2.The I Additional District and Sessions Judge (PCR),
Thanjavur.
- 3.The Deputy Superintendent of Police,
Kudavasal,
Thiruvarur District.
- 4.The Inspector of Police,
Kudavasal Police Station,
Thiruvarur District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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