



Crl.A(MD)No.594 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.08.2023

Pronounced on : 03.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A(MD)No.594 of 2023

1.Senthilkumar

2.Amuthavalli

.. Appellants/Accused Nos.1&2

Vs.

1.State through the
Deputy Superintendent of Police,
Kulithalai,
Karur District.

2.The State represented by,
The Inspector of Police,
All Women Police Station,
Kulithalai,
Karur,
Karur District.
(Crime No.18 of 2022)

3.Jeevitha

.. Respondents

PRAYER: Criminal Appeal filed under Section 14A(2) of SC/ST
(Prevention of Atrocities) Act, 1989, to set aside the order dated



Crl.A(MD)No.594 of 2023

17.07.2023 passed by the learned Additional Sessions Judge, Fast Track Mahila Court, Karur, in Crl.M.P.No.281 of 2023 in Spl.S.C.No.65 of 2022 on the file of the learned Additional Sessions Judge, Fast Track Mahila Court, Karur, and enlarge the appellants on bail in Crime No.18 of 2022 on the file of the 2nd respondent police.

For Appellants : Mr.Ruport J.Barnabas
for Mr.R.Venkatesan

For Respondents : Mr.R.Sivakumar
Government Advocate(Criminal side)
for R1 and R2

: Mr.Henri Tiphagne
for R3

JUDGMENT

The Accused Nos.1 and 2 in Spl.S.C.No.65 of 2022 filed this appeal challenging the dismissal of their bail application in Cr.M.P(MD)No.281 of 2023 by the learned Additional Sessions Judge, Karur, by the impugned order dated 17.07.2023.

2. The appellants are said to have committed offence under Sections 294(b), 323, 328, 341, 366, 450 & 506(i) IPC and Section 5(f),



Crl.A(MD)No.594 of 2023

5(i), 5(l), 5(u), 6, 11(ii), 12, 16 & 17 of the POCSO Act and Section 3(2)

(Va) of the SC/ST Prevention of Atrocities Act. They filed the bail petition before the trial Court and the same was dismissed by the impugned order dated 17.07.2023. Challenging the same, they filed the present appeal.

3. Case of the prosecution:

The first appellant's brother is running a nursing college in the name of Shanmuga Institute of Nursing and Pharma Medical Science College situated in the respondent police jurisdiction. The victim girl was joined in the said college in B.Sc., GNM (General Nursing Midwife) course and doing the first-year and staying in the hostel. She belonged to Scheduled Tribes community. A1 is a practising advocate and a legal advisor to the said institution. A2 is working in the hostel. The victim girl stayed in the hostel. During the first week of July 2021, A1 came to the hostel and asked the victim girl about the food she is fond of and she answered him she likes chilli fish. The very next day, at about 8.00 p.m, while the victim girl and A3 were in the kitchen, A1 offered chilli fish to them and when they were relishing the fish, A1 opened a beer bottle to



Crl.A(MD)No.594 of 2023

WEB.COM

consume. At that time, A3 poured beer in the tumbler and forced the victim girl to consume the same. Thereafter, when the victim girl was in the state of intoxication, A1 sexually assaulted the victim girl. Thereafter, A1 asked the victim girl to come to his house for cleaning, but the victim girl refused to go there. Whenever A1 sexually assaulted the victim girl, A2 & A3 aided the first accused in the commission of the aforesaid offence. In the month of April, 2022, A2 bolted the door of the college hostel from outside, where the victim girl was staying and facilitated the first accused to have access to the victim's room and all the three days, the first accused committed the offence of aggravated penetrative sexual assault on the victim girl. Further, in the year 2021, A1 asked the victim girl to come to the college on Sunday after Deepavali holidays. On the said date, A1 took the victim girl to his mother's house and there, he committed the offence of aggravated penetrative sexual assault on the victim girl and went home by bolting the house from outside. On the same day, A2 came to the aforesaid house and assaulted the victim girl and did not make any effort to rescue the victim, instead, she has scolded the victim girl and left her in the said house and bolted the door from outside as such, she has wrongfully confined the victim girl in the said



Crl.A(MD)No.594 of 2023

WEB COPY

house. In the evening hours, A1 repeatedly came to the said house and committed the offence of aggravated penetrative sexual assault. A2 on those occasions facilitated the first accused in the commission of the aforesaid offence.

4. The respondent police registered a case against the appellants for the above alleged offence. Thereafter, the Law Enforcing Agency made a request to the detaining authority to detain them under the Tamil Nadu Act 14 of 1982. The detaining authority, considering the offence committed by the appellants, detained the appellants under the Tamil Nadu Act 14 of 1982 branding them as “Sexual Offender”. The same was challenged before this Court and this Court quashed the said detention orders by order dated 07.07.2023. Thereafter, they filed the bail petition before the learned trial Court in Cr.M.P.No.281 of 2023. The same was dismissed by the learned trial judge after considering the case of the prosecution as well as the submission made by the defacto complainant. The learned trial judge held that there was serious allegation against the appellants and also there is likelihood of tampering the witnesses. Challenging the same. they filed the present criminal appeal.



Crl.A(MD)No.594 of 2023

WEB COPY 5. The learned counsel for the appellants made the following submissions:

5.1. The learned counsel for the appellants elaborated his argument as if this Court exercised its jurisdiction under appeal against conviction. The learned counsel for the appellants submitted that there was delay of three days in registering the case and the same was not explained by the prosecution and the said delay is made only with an intent to make false allegation against the appellants. The learned counsel further stated that since the victim girl has committed some mistake in the college, the same was enquired by the first appellant, thereafter, she made the undertaking that she will not do such mistake in future, more particularly, the learned counsel relied the undertaking letter written by the victim girl.

5.2. The learned counsel further submitted that the appellants were arrested on 16.07.2022 and the detention order was passed on 24.08.2022 under the Tamil Nadu Act 14 of 1982 branding them as “Sexual Offender”. The same was quashed by this Court on 07.07.2023.



Crl.A(MD)No.594 of 2023

WEB COPY **5.3.** The learned counsel for the appellants further submitted that the first appellant is only the legal advisor to the institution and hence the offence under Section POCSO Act on the relevant Section has not been made out. The learned counsel further submitted that the first appellant is nowhere connected with the management of the said institution in which the victim girl was said to have sexually assaulted by the first appellant. the learned counsel further submitted that the first appellant belongs to scheduled caste and hence the offence under the SC/ST POA Act is not made out. The victim girl, in the FIR and 164 Cr.P.C statement made a set of allegation, but in the evidence before the trial court, she made contra allegation by improving her version from stage to stage and hence, there was no truth in the evidence of the victim girl. The learned counsel further elaborated that the offence under Section 294(b) and 323 IPC and other Sections are not made out against the appellants. The learned counsel further submitted that the occurrence as alleged by the victim girl is highly improbable and the narration of the events itself shows that she made a false version against the first appellant for the reason that she had already given undertaking on 21.04.2022 regarding her mistake. Therefore, the some reason was behind this complaint. He further



Crl.A(MD)No.594 of 2023

WEB COPY

submitted that the chief-examination of PW.1 was over and posted for further examination today and hence there was no necessity to confine him in jail and the material witness, namely the victim girl was examined. He further submitted that the first appellant was inside the jail for more than one year and hence he seeks for bail.

6. The learned Government Advocate (Criminal Side) on instructions, submitted that the first appellant has committed a grave offence, namely, the offence of penetrative sexual assault on the innocent girl student who came to the institution with all trust to get good education provided in the said college. Taking their caste status and economic situation, the first appellant has committed penetrative sexual assault on various occasion as stated in the FIR. In the FIR, it is very clearly stated that the first appellant has committed not only the penetrative sexual assault but also other offence like taking obscene photographs and other related offence. Further, the remaining four material witnesses to be examined, who are the family members of the victim girl. In the said circumstances, there is no reason to allow the appellants to get bail which would result in tampering of the remaining witnesses including the cross-examination of the victim girl.



Crl.A(MD)No.594 of 2023

WEB COPY 7. Reiterating the same, the learned counsel for the intervener/second respondent Mr.Henri Tiphagne submitted that as per the judgment reported in **2005 (11) SCC 163 SC**, the prosecutor as well as the investigating agency has not provided the sufficient protection to the victim girl and the material witnesses and in the said scenario allowing this bail application would result in tampering of evidence. Further, even though the provisions of the SC/ST POA Act as well as the POCSO Act have been invoked, the investigating officer did not provide any protection to the witnesses. According to the learned counsel for the second respondent/defacto complainant, the investigating officer ought to have given the suitable protection and created the atmosphere to the witnesses to depose before the Court without any fear. The learned counsel further submitted that the remaining witnesses have to be protected.

8. This Court has considered the rival submissions made by both parties and also perused the records produced by them and also the final report submitted by the investigating officer by summoning the files of the investigating officer.



Crl.A(MD)No.594 of 2023

WEB COPY 9. This Court is not inclined to make a detailed discussion on the submissions made by the learned counsel for both side, which do not come under the jurisdiction of this Court while considering the bail application. The sum and substance of the submission made by the learned counsel for the appellants is concerned, the first appellant is no way connected with the institution and he, only as a legal advisor, has some relationship with the institution. Further, the victim girl herself gave undertaking that she would not be indulging in any misdeed in future. Hence, she made the false complaint against the first appellant. The same was disputed by counsel for the Defacto complainant. This Court, at this stage, is not only has no jurisdiction to consider the above objection but also has no jurisdiction to go into the defence of the accused and give a detailed reasoning in considering this bail application.

10. In this case, at this stage, the serious allegation made against the appellants, that too, by the victim girl belonging to the Scheduled Tribes community. The record produced by the prosecution and the defacto complainant clearly revealed that the first appellant committed aggravated penetrative sexual assault in the college premises. There is a



Crl.A(MD)No.594 of 2023

WEB COPY

serious allegation against the second appellant that she was working as a warden and she facilitated the first appellant to have access in the victim's room and also paved the way to commit the penetrative sexual assault on the victim girl. The victim girl is the first generation aspirant hailing from the Scheduled Tribes community, and with all odds she joined the college to get her first degree. Every student is entering in each Educational Institutions with full hope of safety and security. It is paramount duty of every person concerned of educational institution, particularly women educational institution to give utmost security and safety to the students. In particular, they are duty bound to create an atmosphere free from sexual exploitation, the same was painfully observed by the Hon'ble Supreme Court expressed in the judgment reported in **1997 (2) SCC 534 [Avinash Nagra v. Navodaya Vidyalaya Samiti and Others]** as follows:

“12. Education to the girl children is nation's asset and foundation for fertile human resources and disciplined family management, apart from their equal participation in socio-economic and political democracy. Only of late, some middle-class people are sending the girl children to co-educational



Crl.A(MD)No.594 of 2023

WEB COPY

*institutions under the care of proper management and to look after the welfare and safety of the girls. Therefore, greater responsibility is thrust on the management of the schools and colleges to protect the young children, in particular, the growing up girls, to bring them up in disciplined and dedicated pursuit of excellence. The teacher who has been kept in charge, bears more added higher responsibility and should be more exemplary. His/her character and conduct should be more like **Rishi and as loco parentis** and such is the duty, responsibility and charge expected of a teacher. The question arises whether the conduct of the appellant is befitting with such higher responsibilities and as he by his conduct betrayed the trust and forfeited the faith whether he would be entitled to the full-fledged enquiry as demanded by him? The fallen standard of the appellant is the tip of the iceberg in the discipline of teaching, a noble and learned profession; it is for each teacher and collectively their body to stem the rot to sustain the faith of the society reposed in them.”*



Crl.A(MD)No.594 of 2023

WEB COPY 11. Unfortunately, in this case, the appellants are facing serious allegation. The learned counsel appearing for the defacto complainant is concerned with the safety of the witnesses. He also requested to give proper security to the witnesses. He further requested to defer the hearing of the bail petition till the examination of the material witnesses.

12. Even though the petitioner is confined for a long period, in the peculiar circumstances of this case, the same is not a ground to grant the relief of bail to the appellants. In this aspect, it is relevant to note the judgment of the Hon'ble Supreme Court reported in **(2022) 5 SCC 465[Jaibunisha v. Meharban]:**

“21.6. Another factor which should guide the courts' decision in deciding a bail application is the period of custody. However, as noted in Ash Mohammad v. Shiv Raj Singh [Ash Mohammad v. Shiv Raj Singh, (2012) 9 SCC 446 : (2012) 3 SCC (Cri) 1172], the period of custody has to be weighed simultaneously with the totality of the circumstances and the criminal antecedents of the accused, if any. Further, the circumstances which may justify the grant of bail are to be considered in the larger context of the



Crl.A(MD)No.594 of 2023

WEB COPY

societal concern involved in releasing an accused, in juxtaposition to individual liberty of the accused seeking bail.”

13. This Court is not inclined to grant bail merely because the final report is filed when there is a reasonable apprehension of potential threat to the witness. In this aspect it is relevant to note the judgment of the Hon'ble Supreme Court reported in **(2021) 6 SCC 191 [Naveen Singh v. State of U.P.,]**:

“12.5. Merely because the charge-sheet is filed is no ground to release the accused on bail.”

14. From the submission of the learned Additional Public Prosecutor and the learned counsel appearing for the defacto complainant and comparative position of the accused and the victim, this Court *prima facie* finds that the apprehension of the safety of the victim and other witnesses is well founded. In this aspect, it is relevant to refer the judgment of the Hon'ble Supreme Court reported in **(2021) 6 SCC 230[Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana]**:

“This is for the reason that the outcome of the



Crl.A(MD)No.594 of 2023

application has a significant bearing on the liberty of the accused on one hand as well as the public interest in the due enforcement of criminal justice on the other. The rights of the victims and their families are at stake as well. These are not matters involving the private rights of two individual parties, as in a civil proceeding. The proper enforcement of criminal law is a matter of public interest.”

15. In the case of ***Sudha Singh v. State of U.P.***, reported in (2021)

4 SCC:

“7. We find in this case that the High Court has overlooked several aspects, such as the potential threat to witnesses, forcing the trial court to grant protection. It is needless to point out that in cases of this nature, it is important that courts do not enlarge an accused on bail with a blinkered vision by just taking into account only the parties before them and the incident in question. It is necessary for courts to consider the impact that release of such persons on bail will have on the witnesses yet to be examined and the innocent members of the family of the victim who might be the next victims.”



Crl.A(MD)No.594 of 2023

WEB COPY

16. In view of the above circumstances, this Court is not inclined to grant bail. The learned Additional Public Prosecutor submitted that final report was filed and the case was taken on file and posted for trial. Therefore, this Court is inclined to issue direction to the learned trial Judge to dispose the trial within three months from the date of receipt of a copy of this order.

17. In the result, this Criminal Appeal is dismissed with the direction to the learned Additional Sessions Judge, Fast Track Mahila Court, Karur, to dispose the trial in Spl.S.C.No.65 of 2022 within a period of three months from the date of receipt of a copy of this order. The investigating officer is directed to give the suitable protection to the witnesses LW.1 to LW.4 to facilitate them to depose before the trial Court with free mind, without any fear or external influence.

03.10.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PJJ



WEB COPY



Crl.A(MD)No.594 of 2023

To

1. The Additional Sessions Judge,
Fast Track Mahila Court, Karur.
2. The Deputy Superintendent of Police,
Kulithalai, Karur District.
3. The Inspector of Police,
All Women Police Station,
Kulithalai, Karur,
Karur District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.A(MD)No.594 of 2023

K.K.RAMAKRISHNAN, J.

PJL

**Judgment made in
Crl.A(MD)No.594 of 2023**

03.10.2023