

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A.(MD).No.753 of 2023

Pathirakalimuthu @ Muthupandi

... Appellant /
Accused No.2

Vs.

1.The Deputy Supreintendent of Police
Thoothukudi Town Sub Division,
Thoothukudi.

2.State through
The Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi District.
Crime No.618 of 2022

... 2ndRespondent
/ Complainant

3.Ratha

... 3rd Respondent /
De-facto Complainant

PRAYER : Criminal Appeal filed under Section 14 A (2) of SC/ST (Prevention of Atrocities) Act, 1989 as amended by Act 1 of 2016, to call for the records relating to the order in Cr.M.P.No.726 of 2023 dated 02.08.2023, on the file of the learned Special Court for Trial of Cases Registered Under

SC/ST (POA) Act 1989, Thoothukudi and set aside the same and grant bail to the appellant by allowing this Criminal Appeal.

For Appellant : Mr.K.Suyambulinga Bharathi

For Respondents : Mr.M.Muthumanikkam
Government Advocate (Crl.Side)
For R1 & R2

:Ms.K.Abiya,
Legal-Aid-Counsel for R3

JUDGMENT

This Criminal Appeal has been filed to set aside the impugned order passed in Crl.M.P.No.726 of 2023 dated 02.08.2023, on the file of the learned Sessions Judge, Special Court for trial of Cases under SC/ST (PoA) Act, Thoothukudi, and enlarge the appellant on bail in connection with Crime No.618 of 2022, on the file of the second respondent police.

2.1. According to the prosecution, the appellant and the other accused said to have committed the offences under Sections 147, 148, 294(b), 324, 307, 302, 506(ii), 109, 120(b) of IPC and Section 3(1)(r), 3(1)(s), 3(2)(v) of SC/ST (PoA) Amendment Act.

2.2. According to the prosecution, before the date and time of occurrence, the deceased parties said to have torn the flex board installed by the petitioner's community leader and the same was questioned by the appellant and other accused. In result, on 13.11.2022 at about 04.30 pm., the appellant/accused along with the other accused assembled unlawfully and used filthy language towards the defacto complainant's son and her deceased husband and murdered the deceased, who belongs to Scheduled Caste by calling their caste name. During the course of the said quarrel, the accused along with other accused wrongfully restrained the son of the deceased and also attempted to murder him. Hence, the second respondent Police registered a case in Crime No.618 of 2022 against the appellant and the other accused persons, for the offences under Sections 147, 148, 294(b), 324, 307, 302, 506(ii), 109, 120(b) of IPC, Section 3(1)(r), 3(1)(s), 3(2)(v) of SC/ST (PoA) Amendment Act. Hence, the petitioner has filed a petition for bail in Cr.M.P.No.726 of 2023, before the learned Sessions Judge, Special Court for Trial of cases under SC/ST (PoA) Act, and the same was dismissed on 02.08.2023. Challenging the same, the appellant has preferred this Criminal appeal.

3. The learned counsel for the appellant would submit that the the appellant did not involve in any occurrence as alleged by the prosecution. The appellant neither participated in the occurrence nor related to the main accused as alleged by the prosecution. Further, he is the permanent resident and there will not be any chance to abscond and he will not tamper the prosecution witnesses, if he comes out on bail. Further he would submit that the learned trial Judge ought to have considered that when bare perusal of the FIR, it would clearly disclose that on *mala fide* intention only, the complaint has been lodged by the defacto complainant. The petitioner was arrested and remanded to judicial custody from 14.11.2022 in Central Jail, Palayamkottai, Tirunelveli District. Under the said circumstance, he seeks bail to the appellant.

4. The learned Government Advocate (Criminal Side) appearing for the State would submit that if the appellant/accused No.2 is released on bail, he will indulge in such offences and there is a chance of threatening the witnesses; there is also a possibility of absconding without appearing for trial and the appellant has the intention of committing offences continuously

with his friends. Further, he would submit that the defacto complainant and her son are living under threat and there is every possibility of tampering of the witnesses and considering the seriousness of the offence, he seeks for the dismissal of this appeal with confirmation of the order passed by the Court below.

5. The learned counsel for the defacto complainant reiterated the submission of the learned Government Advocate (Criminal Side) and further submitted that there is life threat to the witnesses and hence, she seeks dismissal of this appeal.

6. This Court considered the rival submissions made on either side and perused the materials available on record.

7. From the averments, it is seen that in the FIR, the son of the deceased is said to have damaged the display board placed by the accused community people. The said motive is developed into an altercation. Consequently, the appellant and other accused said to have assaulted the

deceased with deadly weapons and caused death. They also said to have assaulted the witnesses and caused injuries to them. The said allegation to be looked into the trial. In this case, the said altercation does not end with any law and order problem. Further, the appellant was arrested on 14.11.2022, from that date onwards, he is in jail. He has no previous antecedent. Now the final report also filed, and also considering the submission of the learned counsel for the appellant that there is no Presiding Officer in the Special Court, and hence, there is no possibility of completion of trial at the earliest. Considering the above circumstances and the period of incarceration, ie., more than 10 months, this Court is inclined to allow the Criminal Appeal by setting aside the order, dated 02.08.2023 made in Cr.M.P.No.726 of 2023 on the file of the learned Sessions Judge, Special Court for Trial of Cases registered Under SC/ST (PoA) Act 1989, Thoothukudi

8. Accordingly, the Criminal Appeal is allowed and the order dated 02.08.2023 made in Cr.M.P.No.726 of 2023 on the file of the learned Sessions Judge, Special Court for Trial of Cases Registered under SC/ST

(PoA) Act 1989, Thoothukudi 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 Special Court for Trial of Cases Registered under SC/ST (PoA) Act 1989, Thoothukudi, and on further conditions that:

(a) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Special Court for Trial of Cases Registered under SC/ST (PoA) Act 1989, Thoothukudi, may obtain a copy of their valid identity card to ensure their identity.

(b) the appellant shall stay at Madurai and report before the Thallakulam Police Station, daily at 10.30 am, until further orders.

(c) the appellant is directed to appear before the Special Court for Trial of Cases registered under SC/ST (PoA) Act 1989, Thoothukudi, on the date of hearing and except for that purpose, he is strictly instructed not to enter in to the place till the disposal of the trial.

(d) the appellant shall not tamper with evidence or witness either during investigation or trial.

(e) the appellant shall co-operate with the investigation.

(f) On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the appellants 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]**.

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

15.09.2023

1/2

NCC :Yes/No

Index :Yes/No

Internet :Yes/No

sbm

Note: Issue order copy on 15.08.2023

To

- 1.The Special Court for Trial of Cases
Registered under SC/ST (PoA) Act 1989, Thoothukudi.
- 2.1.The Deputy Supreintendent of Police
Thoothukudi Town Sub Division,
Thoothukudi.
- 3.The Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai.

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K.K.RAMAKRISHNAN, J.

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