



Crl.A.(MD).No.943 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

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Esakkimuthu

... Appellant / Accused No.2

Vs.

1.The State represented by
The Deputy Superintendent of Police,
Maniyachi Sub Division.

2.The Inspector of Police,
Kadambur All Women Police Station,
Thoothukudi.
(In Crime No.4 of 2023)

...1st & 2nd Respondent/Complainant

3.L.Balakrishnan

...3rd Respondent/De-facto Complainant

PRAYER: Criminal Appeal filed under Section 14(A)(2) of SC/ST Act, to call for the records relating to the order passed in Cr.M.P.No.1007 of 2023 dated 09.10.2023 passed by the Special Court for Exclusively Trial of SC/ST Act Cases (PCR), Thoothukudi and to set aside the same and release the appellant on bail.

For Appellant : Mr.G.Ravisankar

For R1 & R2 : Mr.B.Nambi Selvan
Additional Public Prosecutor

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JUDGMENT

This appeal is filed to set aside the order passed in Cr.M.P.No.1007 of 2023 dated 09.10.2023 passed by the Special Court for Exclusively Trial of SC/ST Act Cases (PCR), Thoothukudi and release the appellant on bail.

2. According to the prosecution the appellant and other accused said to have committed the offence punishable under Sections 417, 354(A), 376 of IPC and Sections 3(1)(w)(ii), 3(2)(v) of SC/ST (POA) Act.

3. The case of the prosecution is that one year ago, one day at about 10.00 a.m., when the unmarried daughter of the complainant was at her home, the accused who came there made a false promise to the *de-facto* complainant's daughter that he would marry her and took her to Kanyakumari and also committed penetrative sexual assault on her and thereby, the *de-facto* complainant's daughter gave birth to a child. Hence, the *de-facto* complainant lodged a complaint before the respondent police and F.I.R. was registered in Crime No.4 of 2023 against the appellant and other accused for the offences under Sections 417, 354(A), 376 of IPC and Sections 3(1)(w)(ii), 3(2)(v) of SC/ST (POA) Act. The appellant moved bail in Cr.M.P.No.1007 of 2023 before



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the Trial Court and the same was dismissed on 09.10.2023.

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4. Aggrieved by the dismissal of bail petition, the appellant has preferred the present Criminal Appeal before this Court.

5. Heard both sides and perused the records in this Criminal Appeal.

6. The learned counsel for the appellant would submit that the appellant is innocent and he has not committed any offence as alleged by the prosecution and the appellant was arrested and remanded to judicial custody on 24.08.2023. He would further submit that the appellant is the breadwinner of his family, the old age parents also being to him and hence he seeks to grant bail to the appellant.

7. The learned Additional Public Prosecutor appearing for the first and second respondents would submit that totally there are three accused in this case and the appellant herein arrayed as Accused No.2. Accused No.1 has already been released on bail by the Trial Court. He would further submit that the investigation is almost completed and the DNA result has also been



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received. As per the DNA report, Accused No.3/Karthick is the biological father of the child and he is still in custody.

8.Considering the above facts and circumstances and also considering the fact that as per the DNA report, the appellant is not the biological father of the child and also considering the period of incarceration, this Court is inclined to allow the Criminal Appeal by setting aside the order, dated 09.10.2023 passed in Cr.M.P.No.1007 of 2023 on the file of the learned Sessions Judge, Special Court for Exclusively Trial of SC/ST Act Cases (PCR), Thoothukudi.

9. Accordingly, the Criminal Appeal is allowed and the order dated 09.10.2023 passed in Cr.M.P.No.1007 of 2023 on the file of the learned Sessions Judge, Special Court for Exclusively Trial of SC/ST Act Cases (PCR), 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 Exclusively Trial of SC/ST Act Cases (PCR), Thoothukudi, and on further conditions that:



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

(b) the appellant shall report before the respondent police daily at 10.30 a.m., until further orders.

(c) the appellant shall not tamper with evidence or witnesses.

(d) On breach of any of the aforesaid conditions, the learned Trial Court is entitled to take appropriate action against the appellant in accordance with law as if the conditions have been imposed by the Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005) AIR SCW 5560]**.

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

16.11.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
vsd



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To

- 1.The Central Prison,
Palayamkottai.
- 2.The Special Court for Exclusively Trial of SC/ST Act Cases (PCR),
Thoothukudi.
- 3.The Deputy Superintendent of Police,
Maniyachi Sub Division.
- 4.The Inspector of Police,
Kadambur All Women Police Station,
Thoothukudi.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 6.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

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