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CrI.A.No.179 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.179 of 2024

1.Marlena Ann
W/o.Anto Madhivanan
2.Anto Madhivanan
S/o.Karunanidhi

... Appellants/Accused 1 & 2

Vs.

1.State rep. by
The Assistant Commissioner of Police,
Tharamani,
Chennai.

2.The Inspector of Police,
Thiruvanmiyur Police Station,
Chennai.
Crime No.15 of 2024

3.Rekha

... Respondents

Prayer: Criminal Appeal filed under Section 14A(2) of the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, 1989, to call for the records in Cr.M.P.No.3037 of 2024 dated 06.02.2024, on the file of the Principal District and Sessions Judge, Chennai and to set aside the same and



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enlarge the appellants/accused 1 and 2 on bail in Crime No.15 of 2024 on the file of the Inspector of Police, Thiruvannamiyur Police Station, Chennai.

For Appellants : Mr.R.John Sathyan, Senior Counsel

For Respondent-1 & 2 : Mr.R.Kishore Kumar
Government Advocate (Crl. Side)

For Respondent-3 : Mr.B.Mohan

JUDGMENT

This Criminal Appeal has been filed to set aside the impugned order in Crl.M.P.No.3037 of 2024 dated 06.02.2024 passed by the learned Principal District and Sessions Judge, City Civil Court, Chennai and enlarge the appellants on bail in connection with Crime No.15 of 2024 on the file of the second respondent Police.

2.This Court, on 28.02.2024, had passed the following order:

“This Criminal Appeal has been filed to set aside the impugned order, dated 06.02.2024 in Crl.M.P.No.3037 of 2024 in Crime No.15 of 2024 passed by the learned Principal Sessions Judge, Court of Sessions at Chennai.



2.The learned Senior Counsel appearing for the appellants submitted that the appellants who are A1 and A2 in Crime No.15 of 2024 for offence under Sections 294(b), 324, 325, 506(i) of IPC r/w Sections 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, arrested by the 2nd respondent Police Station on 25.01.2024. In this case, since the 2nd appellant is a son of sitting MLA, the complaint has been politicalized giving wide adverse publicity creating sensation in the social media and print media. The 2nd respondent Police fearing for the adverse publicity, took hasty step in arresting the appellants. Earlier, the appellants approached this Court in Crl.O.P.No.1548 of 2024 for consideration of the bail application. This Court, by order, dated 24.01.2024 granted two weeks time to the appellants to approach the concerned Court by filing appropriate petition which is the usual practise followed. As per Section 15A(3) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, notice to be given to the victim, but in a haste manner, arrest made on the next day without giving opportunity for the appellants to comply the order of this Court and make submissions and explain the true facts with supporting materials.

3.The learned Senior Counsel further submitted that the victim girl was taken in employment as domestic help for monthly salary of Rs.16,000/-. The victim girl was provided with separate room with attached bathroom and toilet and she was treated as one of the family members of the appellants. Referring to the



photographs taken on the birthday of the victim girl on 25.12.2023 celebrated in the farm house, the learned Senior Counsel submitted that the victim girl found in happy mood, showing how she was treated as a family is explicit. He further submitted that on 14.01.2024, the appellants left the victim girl in her parents house at Ulunthurpet and thereafter, they proceeded to Salem by road and stayed in Radisson Hotel, Salem from 14.01.2024 to 16.01.2024, but the complaint projected against them is that on 15.01.2024, the victim girl was beaten in public at Thiruvannamiyur bus stand using stick and ladle. The complaint is projected in such a way as though the victim girl was injured, got treatment in hospital and from there, information sent to the 2nd respondent Police and the 2nd respondent Police came there, received the complaint, registered FIR. He further submitted that the victim girl was admitted to Amrita Vishwa Vidyapeetham to study Bachelor of Business Administration on 07.09.2023. The fee of Rs.25,500/- and capitation fee of Rs.25,000/- paid by the appellants.

4.Mr.B.Mohan, learned counsel appearing for the 3rd respondent submitted that the victim girl employed through Chitra Agency by the appellants, her mother as single parent took care of her. The victim girl is a bright student scored 433 marks out of 600 marks and she was interested to join B.Sc., Microbiology. They approached Chitra agency which provides domestic help to needy persons. The promise given to the victim girl and her family is that the victim girl would join a college to pursue her study in



Microbiology. Further, she would be paid Rs.2,00,000/- and monthly remuneration of Rs.60,000/-. But on the contrary, the appellants took the victim girl, kept in isolation and made her to study only BBA which is not of the victim girl's choice. The victim girl was ill-treated and she was almost kept in confinement by the appellants. He further made serious allegations against the manner in which the investigation conducted. After the complaint, there was not much progress in the investigation. The Assistant Commissioner of Police who is required to conduct investigation not conducted any investigation in this case. Hence, there is an violation of Rule 7(1). He further submitted that Sections not properly added and altered in this case. On perusal of the complaint, the offence under the Protection of Children from Sexual Offence Act, 2012 and Bonded Labour Act, 1976 gets attracted since the victim girl was a minor from 23rd April to 25th December. The victim girl attained majority on 25.12.2023. In this case, the 3rd respondent has got 29 videos to show how in what manner, the victim girl was treated and these videos not collected by the 2nd respondent Police and no investigation in this regard. He further made specific complaint for not taking the appellants to Police custody for effective and proper investigation.

5.In reply, the learned Senior Counsel for the appellants submitted that the primary allegations of the learned counsel for the 3rd respondent is that the respondent Police not conducted proper investigation and not collected the documents, videos and other



materials from the 3rd respondent. According to the the victim girl, though she states that on 18.01.2024, she was first enquired and thereafter, for 40 days, no enquiry conducted, but in this case, it is learnt that the victim girl gave 164 Cr.P.C., statement on 06.02.2024 before the learned Metropolitan Magistrate, Fast Track Court V, Saidapet. He further submitted that all certificates of the victim girl handed over to the Assistant Commissioner of Police, Neelangarai who is conducting the investigation in this case. He further submitted that Sections 3(1)(r) & 3(1)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 would get attracted if the offence is said to have taken place in a public view. In this case, admittedly, no offence accordingly to the 3rd respondent had been taken place in a public view.

6.In reply, the learned counsel for the 3rd respondent stated that the beating and assault taken place in Thiruvanmiyur bus stand which is a public place, hence, the contention of the learned Senior Counsel cannot be right.

7.The learned Government Advocate (Crl. Side) appearing for the respondents 1 and 2 submitted after registration of the case, the investigation is proceeding on the right direction. To substantiate the same and to refute the allegation made against the investigating agency, he seeks time to file a detailed counter.

8.At the request of the learned Government Advocate (Crl. Side), post the matter on 01.03.2024 under the caption 'For Orders'."



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3.In continuation and conjunction to the earlier order passed by this Court on 28.02.2024, today, Mr.A.Bharath, Assistant Commissioner of Police, Neelankarai Range, Greater Chennai is present before this Court. He filed his counter listing the registration of the cases, thereafter steps being taken by him in examining the victim, victim's mother and thereafter producing the victim before the Magistrate and arrest of the appellants/accused and recovery of the properties including the 10th standard original mark sheet, 11th standard original mark sheet and 12th standard Transfer Certificate of the third respondent.

4.Further submitted that in paragraph 10 of the counter by oversight there is a typographical error stating that statement of the victim was recorded by the Magistrate on 26.01.2024 instead of 06.02.2024. Further from the counter it is seen that so far 16 witnesses examined including the Doctor from Government Royapettah Hospital and Government Hospital Ulundurpet. He also collected AR copy and sent questionnaire to the Doctor with regard to the nature of injuries. It is also seen that on 19.01.2024 the proposal for Monetary Relief Fund has been sent to the Collector, Chennai



to be disbursed to the victim and on receipt of the report from jurisdictional Tahsildar, the compensation amount would be paid to the victim. He further submitted that if the appellants are released on bail, it would hamper the investigation and hence, opposing the same, he filed this counter.

5.The learned counsel appearing for the third respondent/de-facto complainant submitted that in paragraph 10 of the counter it has been mentioned that 164 Cr.P.C. statement recorded on 26.01.2024, Republic Day and it is a public holiday. Though it is a typographical error it would only show how in careless manner investigation is conducted in this case. Further stated that Rule 7(1) of SC/ST Act not followed. As per Rule 7(1) of the Act the Investigating Officer should be not below the rank of Deputy Superintendent of Police in State. In this case it is the Assistant Commissioner of Police, who shall be appointed by the Director General of Police / Superintendent of Police and the person to be nominated as investigating officer should have vast experience in SC/ST Act cases. In this case, the third respondent causes doubt with regard to the investigating officer possessing such experience. He further submitted that the third



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respondent already filed a petition in Crl.M.P.No.4108 of 2024 seeking return of her educational certificates and the respondent police have strongly objected to the same.

6.The learned Government Advocate refuted the allegations made by the third respondent and submitted that investigation has been conducted in proper manner. The present investigation officer competency considered and nominated to conduct investigation in the above case. Though the respondent police had filed their objection for return of documents, it is only for the limited purpose that documents required for investigation. If the de-facto complainant produces the self attested photostat copies of the certificates substituting the same for original mark sheets and certificates with an undertaking that she is not disputing the certified photostate copies, the respondent have no objection to hand over the originals to the third respondent.

7.Considering the submissions made and on perusal of the material available on record it is seen that in this case substantial portion of



investigation conducted. The victim as well as her mother examined, statement recorded. Statement of the victim already recorded under Section 164 Cr.P.C. The appellants have 4 years old daughter, who is now without parents, hence this Court is inclined to grant bail to the appellants subject to the following conditions:

(i)The appellants shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each, with two sureties each for a like sum to the satisfaction of the learned Principal District and Sessions Judge, Chennai.

(ii)the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Judge may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(iii)the appellants shall appear before the second respondent Police daily at 10.30 a.m. for a period of two weeks and thereafter as and when required for interrogation.



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(iv)The appellants shall not give any inconvenience or trouble knowingly or unknowingly to the 3rd respondent, failing which, the bail shall be cancelled without any further reference.

(v)the appellants shall not commit any offences of similar nature;

(vi)the appellants shall not abscond either during investigation or trial;

(vii)the appellants shall not tamper with evidence or witness either during investigation or trial;

(viii)on breach of any of the aforesaid conditions, the learned Judicial 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 appellants 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]***;

(ix)if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.



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8. In view of the above, the impugned order in CrI.M.P.No.3037 of 2024, dated 06.02.2024 passed by the learned Principal District and Sessions Judge, Chennai is set aside and the Criminal Appeal is, accordingly, allowed.

01.03.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
Internet: Yes/No
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Note: Issue Order Copy on 01.03.2024.



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To

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- 1.The Assistant Commissioner of Police,
Tharamani,
Chennai.
- 2.The Inspector of Police,
Thiruvanmiyur Police Station,
Chennai.
- 3.The Principal District and Sessions Judge,
City Civil Court, Chennai.
- 4.The Superintendent,
Central Prison, Puzhal,
Chennai.
- 5.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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