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Crl.A.No.311 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2024

PRONOUNCED ON : 16.04.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.311 of 2024

Anbudurai

... Appellant

Vs.

1.The Deputy Superintendent of Police,
Ariyalur, Ariyalur District.

2.State by,
Inspector of Police,
All Women Police Station,
Jayankondam,
Ariyalur District.
(Crime No.04 of 2024).

3.Manjula

... Respondents

PRAYER: Criminal Appeal is filed under Section 14A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, to set aside the order passed by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur in Crl.M.P.No.689 of 2024 dated 19.02.2024 and enlarge the appellant on bail concerned in Crime No.4 of 2024 on the file of Inspector of Police, All Women Police Station, Jayankondam, Ariyalur District.

For Appellant	:	Mr.K.Balu
For R1 & R2	:	Mr.S.Raja Kumar, Additional Public Prosecutor
For R3	:	Mr.M.Saral, Legal Aid Counsel



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JUDGMENT

The appellant/accused filed a petition for bail in Crime No.4 of 2024 for offence under Sections 354A, 376(2)(n) of IPC and Sections 5(l), 5(j)(ii) r/w 6 of The Protection of Children from Sexual Offence Act, 2012 and Sections 3(1)(2)(ii) & 3(2) (va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (In short 'the Act') before the learned Sessions Judge, Fast Track Mahila Court, Ariyalur in Crl.M.P.No.689 of 2024 and the same was dismissed *vide* impugned order, dated 19.02.2024. Challenging the same, the present criminal appeal is filed.

2.Despite service of notice and name printed in the cause list, none appeared for the 3rd respondent either in person or by any counsel. Hence, this Court appointed Ms.M.Saral, learned counsel as Legal Aid Counsel for the 3rd respondent *vide* order, dated 26.03.2024.

3.The case of the prosecution is that an information was received by the 2nd respondent Police on 25.01.2024 from the Government Hospital, Jayankondam that a minor girl/3rd respondent herein found pregnant. The 2nd respondent Police went to the hospital, recorded the statement of the 3rd



respondent. The 3rd respondent informed that she discontinued her studies after 10th std. She has got two elder brothers, three younger brothers and three younger sisters. All her family members are Coolies and the 3rd respondent used to go for Coolie work. Her date of birth is 04.01.2006. During pongal time i.e., on 15.01.2020 when the 3rd respondent was alone at home, the appellant who belongs to Vanniyar community residing nearby, had come to the house of the 3rd respondent and expressed that he is in love with her and had physical relationship on the pretext of false marriage and the appellant informed that there will not be any problem in his house for marrying her. Again on promise of marriage, the appellant continued physical relationship with her regularly. Further, the appellant developed cordial relationship with her family members and expressed that he has got no difference of caste and class and was friendly with her family members. Whenever the 3rd respondent was alone, the appellant used to come to her house and had physical relationship. When the 3rd respondent felt some movement in her abdomen, she informed the appellant about the same who thereafter refused to marry her citing her community and also disowned her pregnancy. Hence, the complaint lodged.



4.The learned counsel for the appellant submitted that the appellant and the 3rd respondent are at young age, both of them had friendly relationship. Due to adolescent age and not knowing the consequence and seriousness, they had physical relationship. The appellant is yet to settle in his life. Once he settles in his life, he can explain his family members and get their consent for marrying the 3rd respondent. But the 3rd respondent and her family members forced the appellant to marry the 3rd respondent. Due to such situation, the appellant not agreed for marriage, hence, the complaint was lodged. He further submitted that now investigation completed and charge sheet filed before the trial Court, hence, further detention of the appellant is not required. The learned counsel further submitted that the appellant and the 3rd respondent had physical relationship without any compulsion, force or threat. Utmost it can only be stated as consensual relationship but for the age and difference in community. Hence, he prays for setting aside the impugned order.

5.The learned Additional Public Prosecutor appearing for the respondents 1 and 2 filed counter and submitted that on 25.01.2004 when the Sub Inspector of Police attached to the 2nd respondent Police was in station duty, she received information from Government Hospital, Jayankondam.



Immediately, she visited the hospital where the 3rd respondent was taking treatment as inpatient. The respondent Police recorded the statement of the 3rd respondent who informed her date of birth as 04.01.2006 and that on 15.01.2020 at about 03.00 hours, the appellant came to her house and had sexual intercourse on the pretext of false marriage. Though the appellant belongs to different community, he used to regularly visit 3rd respondent at her house. On deception of false promise of marriage, the 3rd respondent had intercourse with the appellant and she became pregnant. When the 3rd respondent approached the appellant for marrying her, he refused to marry her since she belongs to scheduled caste community. He further submitted that on the complaint of the 3rd respondent, FIR in Crime No.4 of 2024 registered for offence under Sections 354A, 376(2)(n) of IPC and Sections 5(l), 5(j)(ii) r/w 6 of The Protection of Children from Sexual Offence Act, 2012 and Sections 3(1)(2)(ii) & 3(2) (va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the appellant on 25.01.2024 and the same was forwarded to the Deputy Superintendent of Police/1st respondent herein and he took up further investigation. On completion of investigation, the 1st respondent filed charge sheet before the trial Court on 18.02.2024. Hence, he opposed for granting bail to the appellant.



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6.The learned counsel for the 3rd respondent filed counter and submitted that the 3rd respondent got acquainted with the appellant since 2020 and the appellant made a false promise to marry her and forced her to have sexual relationships since then. The appellant deceived the 3rd respondent by making false promise to marry her and committed penetrative sexual assault. When the 3rd respondent informed the appellant that she was pregnant and asked him to marry her, the appellant not only refused to marry her, he also disowned her pregnancy. The 3rd respondent was shocked, shattered and informed that she is willing to undergo DNA test to prove that the appellant is the father of the child. The learned counsel further submitted that from the inception of the acquaintance since 2020, the consent given by the 3rd respondent as a minor is a result of deception to marry and committed penetrative sexual assault as a minor hailing from marginalized society.

7.In support of her submission, the learned counsel relied on the decision of the Hon'ble Apex Court in the case of “***Sheikh Arif v. State of Maharashtra and another*** reported in ***2024 SCC OnLine SC 85***” wherein it had held that *'the consent of the victim is based on misconception, such*



consent is immaterial as it is not voluntary consent. If it is established that from the inception, the consent by the victim is a result of a false promise to marry, there will be no consent, and in such a case, the offence of rape will be made out'. The learned counsel further submitted that several relatives of the appellant approached the 3rd respondent to forcibly convince her to abort the pregnancy and reiterated that their marriage would not be possible citing caste differences. Some had also approached her to give consent for the appellant's bail. Now the 3rd respondent is struggling in her life and her family is unable to support her to take proper care of her health and she has been mentally traumatized by the turn of events of her pregnancy and the refusal of marriage by the appellant. She further submitted that the 3rd respondent is entitled for interim compensation under the Tamil Nadu Victim Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2018 by the TNSLSA which has to be paid forthwith along with the expenditure incurred by the 3rd respondent's mother for the travel and loss of wages. As per Section 15-A(6)(11) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2015 and State Contingency Plan under Rule 15 of the Act, the 3rd respondent is entitled to immediate relief of compensation for medical and travelling expenses. Hence, she prays for dismissal of the criminal appeal



and also a direction for payment of compensation.

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8.Considering the submissions and on perusal of the materials, it is seen that the 3rd respondent, a school dropout doing Coolie work and her family members are all Coolies. Taking advantage of the financial and social status of the 3rd respondent, the appellant exploited the 3rd respondent and committed penetrative sexual assault on several occasions. Due to which, the 3rd respondent became pregnant. When the 3rd respondent informed her pregnancy to the appellant, the appellant not only refused to marry her but also disowned her pregnancy. Now the family members of the appellant are exerting pressure on the 3rd respondent and her family members not to pursue the case.

9.Considering the welfare and safety of the 3rd respondent and also finding that charge sheet already filed and trial itself can be completed within a stipulated period as contemplated under Section 14 of the Act, this Court is not inclined to grant bail to the appellant.

10.As per Scheduled Castes and the Scheduled Tribes (Prevention of



Atrocities) Rules, 1995, 50 per cent of relief amount to be paid to the victim girl after medical examination and 25 per cent to be paid when the charge sheet is sent to the Court. In the present case, both process completed. Now the victim girl/3rd respondent is entitled for 75 per cent of relief amount. The 1st respondent Police viz., Deputy Superintendent of Police, Ariyalur is reminded of Section 21 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and he is directed to take immediate steps for payment of compensation amount to the 3rd respondent, without further delay. The respondents 1 and 2 are directed to give appropriate protection to the 3rd respondent from the threat and fear of assault by the appellant and his family members. If requires, coercive action to be taken.

11.This Court appreciates Ms.M.Saral, Legal Aid Counsel for the 3rd respondent not only for making effective submissions but also in addressing the pain of the 3rd respondent and ensuring the payment of compensation to the 3rd respondent.

12.In the result, this criminal appeal stands dismissed affirming the



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impugned order, dated 19.02.2024 in Crl.M.P.No.689 of 2024 passed by the
Sessions Judge, Fast Track Mahila Court, Ariyalur in Crl.M.P.No.689 of 2024.

16.04.2024

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

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To

1.The Deputy Superintendent of Police,
Ariyalur, Ariyalur District.

2.The Inspector of Police,
All Women Police Station,
Jayankondam, Ariyalur District.

3.The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGMENT IN
CrI.A.No.311 of 2024

16.04.2024