



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.10003 of 2023
and CRL.M.P No.6596 of 2023

1.Raju

2.Rajesh

3.Ragavendran

...Petitioners

Vs.

1.Madhumitha

2.State Rep: The Inspector of Police,
V6 Kolathur Police Station,
Kolathur, Chennai – 600 099.
(Crime No.49 of 2023)

...Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order dated 24.04.2023 in Crl.M.P.No.7183/2023 passed by the Principal Session Judge, Chennai.

For Petitioner : Mr.A.Sundara Vadhanan

For Respondent : Mr.V.Balu for R1
Mr.A.Gopinath
Government Advocate for R2



ORDER

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This criminal original petition has been filed challenging the order passed by the Court below in Crl.M.P.No.7183 of 2023, dated 24.04.2023, canceling the bail granted in favour of the petitioners by the learned XIII Metropolitan Magistrate, Egmore in Crl.M.P.No.9885 of 2023 by an order dated 10.03.2023.

2.Heard Mr.A.Sundara Vadhanan, learned counsel appearing on behalf of the petitioner, Mr.V.Balu, learned counsel appearing on behalf of the 1st respondent and Mr.A.Gopinath, learned Government Advocate (Crl. Side) appearing on behalf of the 2nd respondent.

3.In the instant case, FIR was registered for offence under Sections 147, 294(b), 323 and 506(i) of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002. The petitioners were arrested and they were produced before the XIII Metropolitan Magistrate, Egmore. The petitioners were remanded only for offence under Section 147, 294(b), 323 of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002. Insofar as 506(i) of IPC is concerned, the remand Magistrate came to a conclusion that the offence is not made out.



4.The petitioners thereafter filed the bail application before the XIII Metropolitan Magistrate, Egmore and the said application was allowed in the following terms:

Since the alleged offences are bailable the accused are ordered to be released on bail on executing bond like sum of Rs.10,000/- with two sureties each each for like sum.

5.The above order was challenged by the *defacto* complainant before the learned Principal Sessions Judge, Chennai in CrI.M.P.No.7183 of 2023. The said application was allowed by an order dated 24.04.2023 and the relevant portions are extracted hereunder:

6.The learned counsel for the petitioner/defacto complainant would submit before this Court that the petitioner/defacto complainant is a married woman. The petitioner and 1st respondent loved each other. He forced her to divorce her husband and promised to marry her. So, she divorced her husband legally and accepted the marriage proposal of the 1st respondent. The petitioner spent all her income and pledged 5 sovereigns of her gold jewels for the 1st respondent. On 23.02.2023 he made all arrangements for the marriage. He concealed his first marriage held on 12.05.2021 and had several intercourse with the petitioner. He forced to abort the child on 01.06.2021 and signed as husband in the hospital for operation. When they both went to



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police station to sort out the complaint given by his wife, the family members of the 1st respondent took the petitioner to their house and assaulted her. The petitioner gave a complaint on 09.03.2023 before the V6 Kolathur Police Station and a case was registered under Section 147, 294(b), 323 and 506(i) of IPC and under Section 4 of the Tamil Nadu Prohibition of Women Harassment Act. The respondents 1 to 3 were arrested on 10.03.2023 and produced before the learned XIII Metropolitan Magistrate, Egmore, Chennai. However, the learned Magistrate granted bail to them stating that the offence are bailable. The offence under Section 4 of the Tamil Nadu Prohibition of Women Harassment Act is non-bailable offence. Hence, the petition to cancel the bail granted to the respondents 1 to 3.

7.It is admitted fact that the case has been registered for the alleged offence of 147, 294(b), 323 and 506(i) of IPC and under Section 4 of the Tamil Nadu Prohibition of Women Harassment Act and the respondents 1 to 3 were arrested and produced before the learned XIII Metropolitan Magistrate, Egmore, Chennai and they were released on bail on condition to execute a bond of Rs.10,000/- with two sureties for the like sum. On perusal of the order passed by the learned XIII Metropolitan Magistrate, Egmore, Chennai, it is seen that the learned Magistrate has passed the order stating as “since the alleged offences are bailable the accused are ordered to be released on bail on executing bond like sum of Rs.10,000/- with two sureties each for like sum.” No reason has been assigned by the learned Magistrate for releasing the accused for the non-bailable offences. On the other hand



he has stated that the offences are bailable offences, which is not in accordance with law. Since there is no bailable offences, the Magistrate ought to have remanded them to judicial custody. In such circumstances, the Court is of the view that the bail granted to the respondents 1 to 3 by the learned Magistrate is not in accordance with law and hence, the same is liable to be cancelled.

6. In the considered view of this Court, this Court is not able to see any illegality or infirmity in the order passed by the Court below. The Court below has merely stated that the Magistrate while granting bail has not applied his mind and has mechanically stated that he is releasing the accused, since the alleged offence is bailable. Obviously, the Magistrate never discussed anything about the allegations made in the FIR and nothing is found in the order to come to a conclusion that the learned Magistrate had applied his mind. Therefore, this Court does not find any ground to interfere with the order passed by the Court below.

7. In the light of the above discussion, it is left open to the petitioners to file a fresh bail application before the concerned jurisdictional Court on or before 02.02.2024. Notice shall be ordered to the respondent police as well as the *defacto* complainant. The order shall be passed on its own merits and in accordance with law on or before 09.02.2024. In the meantime, the present *status quo* shall be maintained.



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8.This criminal original petitioner is disposed of in the above terms.

Consequently, connected miscellaneous petition is closed.

24.01.2024

Index: Yes/No

Speaking order/Non-speaking Order

Neutral Citation: Yes/No

ssr

Note:Issue Order Copy on 29.01.2024



To

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- 1.The Principal Session Judge,Chennai.
- 2.The Inspector of Police,
V6 Kolathur Police Station,
Kolathur, Chennai – 600 099.
- 3.The Public Prosecutor,
High Court, Madras.



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N.ANAND VENKATESH, J

SSR

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