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Crl.A.No.1394 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.A.No.1394 of 2024

Abinesh

... Appellant

Vs.

1.State rep. By
The Superintendent of Police,
Villupuram,
Villupuram District.

2.State rep. By
The Inspector of Police,
Valathy Police Station,
Villupuram District.
(Crime No.370 of 2024)

3.Visalatchi

... Respondents

PRAYER: Criminal Appeal filed under Section 14(A)(2) of the SC/ST Act, 1989, to set aside the order passed by the learned Special Court for trial of cases under POCSO Act, Villupuram in Crl.M.P.No.1250 of 2024 dated 06.11.2024 and enlarge the appellant on bail in Crime No.370 of 2024 pending on the file of the respondent police.



Crl.A.No.1394 of 2024

For Appellant : Mr.V.R.Appaswamee
For R1 & R2 : Dr.C.E.Pratap
Government Advocate (Crl. Side)
For R3 : Ms.Vinu Pratha
Legal Aid Counsel

JUDGMENT

The appeal challenges the dismissal of the appellant's bail application filed before the learned Special Judge.

2.The case of the prosecution is that on 15.09.2024 the appellant had kidnapped the victim girl and that after she returned to the house when the parents of the victim questioned her, she committed suicide. The appellant filed a bail application before the learned Sessions Judge and after notice to the defacto complainant, the said petition was dismissed on 06.11.2024 considering the gravity of the offence.

3.The learned counsel for the appellant would submit that it is the case of the prosecution that the appellant kissed and hugged the victim and



when this was questioned by the parents of the victim, she felt humiliated and committed suicide; that in any case it is the case of love affair and the appellant has been falsely implicated.

4.The learned Government Advocate (Crl. Side), on instructions, would submit that though the case was registered for the offence under Sections 11(1), 12 of POCSO Act and Section 3(1)(w)(i) of SC/ST Act, the offence has been altered to Section 108 of BNS and that the investigation is still pending.

5.Ms.Vinu Pratha, learned counsel for the third respondent submitted that the allegations are serious in nature and therefore the appellant does not deserve any indulgence and prayed for dismissal of the appeal.

6.On perusal of the FIR, it is seen that the appellant and the victim were found to be together by the mother of the victim and that the mother of the victim had scolded the victim as to why she went with the appellant and thereafter, the victim committed suicide in her bedroom. On the face of it, it



appears to be the case of love affair which has been objected to by the defacto complainant. Therefore, the question as to whether the appellant is liable for the offence under Section 108 of BNS has to be decided in the trial. Further, since the learned Government Advocate (Crl. Side) is unable to point out as to why the appellant's further custody is required in this case. this Court is inclined to grant bail to the appellant.

7. Accordingly, the appellant is released on bail on following conditions:

(i) The appellant shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Villupuram, Villupuram District.

(ii) The appellant/accused shall report before the concerned Trial Court on every Monday at 10.00 a.m, until further orders and shall appear before the Trial Court on all hearing dates without fail.

(iii) The appellant/accused shall not commit any offences of similar nature.

(iv) The appellant/accused shall not abscond either during investigation or trial.



Crl.A.No.1394 of 2024

(v)The appellant/accused shall not tamper with evidence or witness either during investigation or trial.

(vi)on breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the appellant 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]***.

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

8.In view of the above, the impugned order, dated 06.11.2024 in Crl.M.P.No.1250 of 2024 passed by the Special Court for trial of cases under POCSO Act, Villupuram is set aside and the Criminal Appeal is allowed.

9.The Legal Aid Services Authority shall pay the schedule fees to Ms.Vinu Pratha, Advocate.

26.11.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No



Crl.A.No.1394 of 2024

To

- 1.The Sessions Judge,
Special Court for trial of cases
under POCSO Act,
Villupuram.
- 2.The Superintendent of Police,
Villupuram,
Villupuram District.
- 3.The Inspector of Police,
Valathy Police Station,
Villupuram District.
- 4.The District Jail,
Villupuram.
- 5.The Public Prosecutor,
High Court, Madras.



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Crl.A.No.1394 of 2024

SUNDER MOHAN, J.

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Crl.A.No.1394 of 2024

26.11.2024