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CrI.O.P.No.30851 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2024

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.O.P.No.30851 of 2024

1. Jeyakandhan
2. Nadhiya @ Nathiya

... Petitioners

Vs.

1. State rep by
The Deputy Superintendent of Police,
Kanchipuram, Kanchipuram District.
2. The Inspector of Police,
Salavakkam Police Station,
Kanchipuram District,
Crime No.212 of 2024.

3. Gopalakrishnan

... Respondents

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to direct the learned Principal District and Sessions Judge under SC and ST (POA) Act, Kanchipuram to consider the bail application of the petitioners at the time of their surrender on the same day itself in connection with Crime No.212 of 2024 on the file of the respondent.



CrI.O.P.No.30851 of 2024

For Petitioners : Mr.A.Saranraj
For Respondents : Mr.S.Sugendran
Additional Public Prosecutor
for R1 and R2

ORDER

This Criminal Original Petition is filed to direct the learned Principal District and Sessions Judge under SC and ST (POA) Act, Kanchipuram, to consider the bail application of the petitioners herein on the same day of their surrender pertaining to Crime No.212 of 2024 on the file of the second respondent police.

2. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor appearing for respondents 1 and 2 and perused the materials available on record.

3. It is to be noted that Section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short “SC/ST Act”), is bar to file a petition under Section 438 Cr.P.C./482 BNSS. Therefore Anticipatory Bail is not maintainable for the offence under the SC/ST Act. Further Section 15A under Chapter IV-A was introduced by Act 1 of 2016 w.e.f. 26.01.2016, as per which, notice has to be sent to the



CrI.O.P.No.30851 of 2024

victim, in respect of any proceedings and without giving notice, no proceedings shall be proceeded further. Further, the inherent power under Section 482 Cr.P.C./528 BNSS should not be invoked automatically and the jurisdiction under Section 482 Cr.P.C., /528 BNSS should be exercised sparingly. When there is specific bar under the Special Act, this Court cannot ignore the intention of the Legislators and the purpose of enactment of the Special Act. If the application of the petitioners is directed to be considered on the same day without giving notice to the victim, the purpose of Section 15A(3)(5) of SC/ST Act would be defeated and the same would curtail the statutory right of the victim.

4. Under such circumstances, this Court is not inclined to invoke Section 482 Cr.P.C./528 BNSS which would amount to ignoring the provisions of the Special Act. Therefore, this petition shall stand dismissed. However, the petitioners are at liberty to workout their remedy in the manner known to law and the learned Special Judge is directed to exercise his/her discretionary power after giving notice to the victim. The learned Special Judge/Magistrate is also directed to adhere the statutory provisions of Sections 18 and 15 A (3)(5) of SC/ST Act.



CrI.O.P.No.30851 of 2024

10.12.2024

WEB COPY

Index : Yes/No

Neutral Citation Case : Yes/No

Speaking Order : Yes/No

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To

1. The Principal District and Sessions Judge
under SC and ST (POA) Act, Kanchipuram.
2. The Deputy Superintendent of Police,
Kanchipuram, Kanchipuram District.
- 3 The Inspector of Police,
Salavakkam Police Station,
Kanchipuram District.
4. The Public Prosecutor,
High Court, Madras.



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CrI.O.P.No.30851 of 2024

P.VELMURUGAN, J

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CrI.O.P.No.30851 of 2024

10.12.2024