

Crl. A.(MD)No.672 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATE : 16.07.2025

CORAM

THE HONOURABLE DR. JUSTICE R.N.MANJULA

Crl. A.(MD)No.672 of 2025

Sakthivel

... Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by the Deputy Superintendent of Police
Sattur Sub-Division,
Virudhunagar District.

2. The Inspector of Police,
Sattur Town Police Station,
Virudhunagar District.
In Crime No. 236 of 2024.

3. E. Vijayalakshmi

4. Mageshwari

... Respondents

Prayer : This Criminal Appeal is filed under Section 14A(2) of SC/ST (PoA) Act to set aside the order made in Crl.M.P.No.30 of 2025 on the file of Sessions Judge, Special Court for trial of SC/ST (PoA) Act Cases, 1989, Virudhunagar District at Srivilliputtur on 20.03.2025 and enlarge the petitioner/A7 on bail in Spl.SC No.21 of 2023 on the file of learned Sessions Judge, Special Court for trial of SC/ST (PoA) Act Cases, 1989, Virudhunagar District at Srivilliputtur.



WEB COPY



Crl. A.(MD)No.672 of 2025

For Appellant : Mr.K.Dinesh
For R1 & R2 : Mr.K.Gnanasekaran
Government Advocate (Criminal Side)
For R3 & R4 : No appearance

JUDGMENT

This Criminal Appeal is filed challenging the order passed by the learned Sessions Judge, Special Court for trial of SC/ST (PoA) Act Cases, 1989, Virudhunagar District at Srivilliputtur in Cr.M.P.No.30 of 2025 dated 20.03.2025.

2. The appellant is A1, who was arrested and remanded to judicial custody on 02.08.2024.

3.The case of the prosecution is that on 01.08.2024, the accused 1 and 2 abused the deceased, who belonged to Scheduled community and murdered him. Based on the complaint given by the defacto complainant, an FIR has been registered in Cr.No.236 of 2024 against the accused for the offences under Sections 103, 296(b) of BNS and 3(1)(r), 3(1)(s),3(2)(v) of SC/ST (POA) Act, 1989.



Crl. A.(MD)No.672 of 2025

4.The learned counsel appearing for the appellants submitted that after completion of the investigation charge sheet has been filed against the accused persons and co-accused has already been released. This appellant is in custody for more than 330 days. If he is released on bail, he would comply with the direction and will co-operate for the trial.

5.Mr.K.Gnanasekaran, learned Government Advocate (Crl. Side) appearing for the respondent submitted that the appellant is a habitual offender and he is involved in similar such offence. If the appellant is released on bail, he would hamper the investigation. Since the appellant has been charged for the offence of murder, it is observed by the learned trial Judge that the release of appellant would cause communal tension and he might tamper the evidence or he would abscond.

6. The trial Court has chosen to dismiss the bail petition of the appellant by observing as under:

“7) On perusal of records this case was registered in Cr.No.236/2024 of Sattur Town P.S. U/S 103 of BNS @ 103 of BNS r/w 3(1)(r), 3(1)(s), 3(2)(v) of SC/ST Act @ 296(b), 103 of BNS r/w 3(1)(r), 3(1)(s), 3(2)(v) of SC/ST Act and it is taken on file as Spl.S.C.No.85/2024 and the charges framed against the



WEB COPY

accused person. The prime objections of the learned Special Public Prosecutor is that the petitioner / A1 is already involved in a case in Cr.No.642/2022 of Sivakasi East P.S u/s 147, 148, 201, 302, 34 of IPC and now he is also involved in a similar crime of murder and if he is enlarged on bail he will continue his criminal activities. Further he also argued that even though the charge sheet has been filed in this case, since A1 is already involved in a double murder case he will be a threat to the society, if he is released on bail. Also in C.A.No.1083/2024 filed by the petitioner regarding bail in the Hon'ble Madurai Bench of Madras High Court, the above appeal is not pressed by the petitioner on 24.02.2025. The primary considerations which must be placed at balance while deciding the grant of bail are:

- (i) The seriousness of the offence;*
- (ii) The likelihood of the accused fleeing from justice;*
- (iii) The impact of the release of the accused on the prosecution witnesses;*
- (iv) Likelihood of the accused tampering with evidence.*

8) Further in Satender kumar Vs. CBI and another the Hon'ble Supreme Court has held that,

58. Section 437 of the Code empowers the Magistrate to deal with all the offenses while considering an application for bail with the exception of an offense punishable either with life imprisonment or death triable exclusively by the Court of Sessions. The first



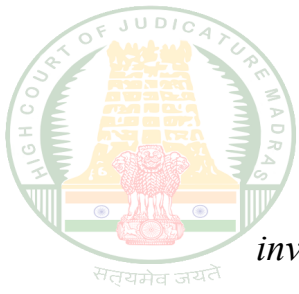
WEB COPY



Crl. A.(MD)No.672 of 2025

proviso facilitates a court to conditionally release on bail an accused if he is under the age of 16 years or is a woman or is sick or infirm, as discussed earlier. This being a welfare legislation, though introduced by way of a proviso, has to be applied while considering release on bail either by the Court of Sessions or the High Court, as the case may be. The power under Section 439 of the Code is exercised against an order rejecting an application for bail and against an offence exclusively decided by the Court of Sessions. There cannot be a divided application of proviso to Section 437, while exercising the power under Section 439. While dealing with a welfare legislation, a purposive interpretation giving the benefit to the needy person being the intendment is the role required to be played by the court. We do not wish to state that this proviso has to be considered favourably in all cases as the application depends upon the facts and circumstances contained therein. What is required is the consideration per se by the court of this proviso among other factors.

From the above citation, the application u/s 439 of Cr.P.C (now 483 BNSS) is to be considered depends upon the facts and circumstances contained therein. In this case the alleged offence is serious in nature. The punishment is one of including capital punishment. The petitioner/A1 is already



Crl. A.(MD)No.672 of 2025

involved in a double murder case on the file of Sivakasi East

P.S.

WEB COPY

9) In deciding the bail application, as per the law laid down by the Hon'ble Supreme Court in Prasanta Kumar Sarkar Versus Ashis Chatterjee & Another (CDJ 2010 SC 1010), the character, behaviour, means, position and standing of the accused and the likelihood of the offence being repeated is also to be considered.

7.However, in this case, trial has not yet commenced and the co-accused has already been released on bail. The appellant, who is involved in other case, wherein, he has been arrayed as A6, arrested and subsequently released on bail.

8.Considering the fact that the appellant has already undergone long incarceration from 02.08.2024 and the fact that the co-accused has already been enlarged on bail, I feel that the appellant can be released on bail on certain stringent conditions.

9. Accordingly, this Criminal Appeal is allowed by setting aside the order, dated 20.03.2025 in Crl.M.P.No.30 of 2025 on the file of the learned Sessions Judge, Special Court for trial of SC/ST (PoA) Act Cases, 1989,



Crl. A.(MD)No.672 of 2025

Virudhunagar District at Srivilliputtur. The appellants are ordered to be

WEB COPY

released on bail on his executing a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties, each for a like sum to the satisfaction of the learned *Sessions Judge, Special Court for trial of SC/ST (PoA) Act Cases, 1989, Virudhunagar District at Srivilliputtur*, and on further conditions that:

[a]the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Sessions Judge may obtain a copy of their valid identity card to ensure their identity.

[b]the appellant shall stay at Trichy District and report before the Cantonment Police Station daily at 10.00 a.m., until further orders.

[c]the appellant shall not tamper with evidence or witness either during investigation or trial and they shall not involve in similar type of offences during the bail period.

[d]the appellant shall co-operate with the investigation.

[e]On breach of any of the aforesaid conditions, the learned Sessions Judge/Trial Court is entitled to take appropriate action against the appellants in accordance with law as if the conditions have been imposed and the appellant released on bail by the learned Sessions Judge/Trial Court himself as laid down by the Hon'ble Supreme Court in



WEB COPY



Crl. A.(MD)No.672 of 2025

P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 269 of BNS.

16.07.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
PNM

To

- 1.The Sessions Judge,
Special Court for trial of SC/ST (PoA) Act Cases, 1989,
Virudhunagar District at Srivilliputtur
- 2.The Inspector of Police,
Sattur Town Police Station,
Virudhunagar District.
In Crime No. 236 of 2024.
- 3.The Jail Superintendent,
District Jail, Virudhunagar
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl. A.(MD)No.672 of 2025

R.N.MANJULA, J.

PNM

JUDGMENT IN
Crl.A.(MD)No.672 of 2025

16.07.2025