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Crl.A.No.245 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 27.03.2024	Orders Pronounced On 15.04.2024
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K.Selvakumar

... Appellant

Vs.

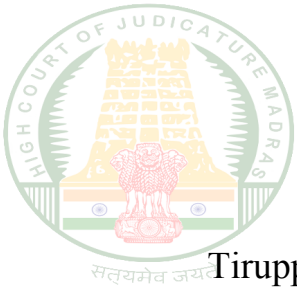
1.The State represented by
The Deputy Superintendent of Police,
Udumalpet Police Station,
Udumalpet, Tiruppur District – 642 126.

2.The Inspector of Police,
Udumalpet Police Station,
Tiruppur District – 642 126.
[Crime No.728/2023]

3.Kumar

... Respondents

PRAYER: Criminal Appeal filed under Section 14(A)(2) of SC/ST Act, to call for the records pertaining to the order dated 22.02.2024 made in Crl.M.P.No.420 of 2024 on the file of the Principal Sessions Judge,



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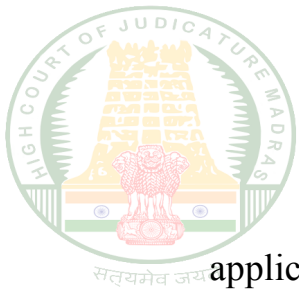
Tiruppur and set aside the same and consequently enlarge the petitioner on bail in connection with Crime No.,728 of 2023 on the file of the second respondent.

For Appellant : Mr.P.Srinivasan
For R1 & R2 : Mr.S.Raja Kumar
Additional Public Prosecutor
For R3 : Ms.Lavanya Thirumalai
Legal Aid Counsel

JUDGMENT

The appellant, who is arrayed as A7 in Crime No.728 of 2023 for the offence under Sections 147, 148, 294(b), 342, 324, 506(ii), 307, 302 IPC r/w. 3(1)(r), 3(2)(b) of SC/ST [POA] Act, 2015 filed this appeal/bail application.

2.The appellant herein filed Crl.O.P.No.417 of 2024 to consider his bail application on the same day of his surrender. This Court by order dated 10.01.2024 directed the appellant to surrender before the Trial Court and on such surrender, directed the learned Special Judge to consider his bail



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applicant on the same day of his surrender. Thereafter, the appellant surrendered before the Trial Court on 24.01.2024 and filed a bail application in CrI.M.P.No.420 of 2024.

3.The contention of the learned counsel for the appellant is that the appellant is innocent and not committed any offence. The appellant was implicated on the confession of co-accused. In this case, already bail was granted by the Special Court to A1 in CrI.M.P.No.376 of 2024 on 20.02.2024, A2, A4 to A6 granted bail by the Special Court in CrI.M.P.No.378 of 2024 on 20.02.2024 and A8 granted bail by the Special Court in CrI.M.P.No.421 of 2024 on 22.02.2024. He would submit that the Special Court granted bail to the accused finding that they were in confinement for 56 days, 54 days and 56 days respectively and also for the reason that investigation is almost completed. But the appellant's bail application was dismissed for the reason that the appellant was in prison only for 30 days and the investigation as far as the petitioner, it is in premature stage. Now, the appellant is in confinement for more than 60 days and hence, prayed for bail.



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4.The learned Additional Public Prosecutor took time for filing counter. In the meantime, this Court on 13.03.2024 appointed Ms.Lavanya Thirumalai as legal aid counsel to appear on behalf of the third respondent/defacto complainant. On 21.03.2024, the defacto complainant/Kumar and Manickam, S/o. Sengottaiyan/deceased appeared before this Court and they took the services of the legal aid counsel and counter had been filed.

5.The Investigating Officer/Deputy Superintendent of Police, Udumalpet filed a counter stating that on 27.12.2023 at about 15.30 hours, the defacto complainant/Kumar lodged a complaint to the respondent police stating that he and his uncle Sengottaiyan were hunting birds using slingshot, at that time, some stones hit the hen and cocks in A1 property. The hens and cocks got panic, started making noise and were flying here and there. On hearing the noise of the birds, A1 came out of his house, caught hold the defacto complainant and Sengottaiyan, called the villagers and friends, who tied them in the coconut tree and the accused beaten them



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black and blue. Since Sengottaiyan expressed dizziness and fell down, he was taken in an ambulance, admitted in Government Hospital, Udumalpet and subsequently, he died. The defacto complainant sustained serious injuries and on receipt of the information from the hospital, a case in Crime No.728 of 2023 was registered on 27.12.2023 at about 23.30 hours. The Deputy Superintendent of Police took up the investigation, visited the scene of occurrence, prepared observation mahazar and rough sketch in the presence of witnesses and examined the other witnesses present there. During the course of investigation, on 28.12.2023, A1 was arrested, who gave a confession statement about the involvement of other accused and he was remanded to judicial custody. On 29.12.2023, A2, A3, A5, A6 and A8 were arrested, confession statement recorded and remanded to judicial custody. In this case, A4 is still absconding. On 24.01.2024, the appellant/A7 voluntarily surrendered before the Special Court and remanded to judicial custody. On the statement of witnesses and materials collected, the case was subsequently altered. The Special Court dismissed the bail application of the appellant and had now preferred the present appeal. He further submitted that substantial portion of investigation



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completed, awaiting caste and community certificate of the accused and the victim in this case and once of the accused is absconding, charge sheet is yet to be filed. He would further submit that granting bail merely on the period of detention will not be proper in cases of such nature. Hence, he strongly opposed this appeal.

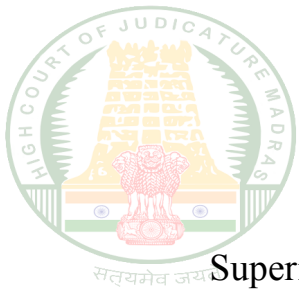
6.From the counter, it is seen that by mistake stones from slingshot hit the birds of A1, birds started flying and screaming. On hearing the noise, A1/Selvakumar came out of his house, threatened them, abused them by calling their caste name, though the defacto complainant and Sengottaiyan explained and reasoned out to him, the accused person tied both of them using a nylon rope in the tree. Further A1 made phone calls to other persons who came there and started beating them mercilessly for more than an hour. Since Sengottaiyan swooned, the accused persons untied them and they left the place in a two wheeler. The defacto complainant took his uncle to the Government Hospital, Udumalpet where he was pronounced dead. As regards the granting of bail by the Special Court to the other accused, the victims were neither informed nor any notice was served to them and bail



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was granted on their behind defeating the purpose of Section 15A(3) of SC/ST Act. The victims are illiterates, nomadic, not conversant with the Court and other procedures were kept in dark. She would submit that the respondent police not sensitive to the life of the victims since they hail from a marginalized community. The prosecution though represented that they were informed about the notice and also made their objections while granting bail to the other accused is not proper. She further submitted that only on 26.03.2024 through the legal aid counsel the victim came to know that there is such a right for the victims to oppose the bail application and in this case, this right was denied to the victims. The accused in this case are influential persons belonging to the dominant community with muscle and political power, played fraud on the Court in collusion with the persons who are entrusted with the duty to safeguard the victims from oppression, all joined hands with the offenders and facilitated them to get bail. She further submitted that now though claimed investigation completed, as per the Criminal Rules of practice, charge sheet can be filed awaiting certificate or reports which can be directly sent to the Court at a later point of time. This is to ensure, to avoid default bail. But in this case, the Deputy



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Superintendent of Police state that investigation completed much earlier but charge sheet is yet to be filed before the Court, thereby facilitating the accused to avail the benefit of Statutory bail under Section 167(2) Cr.P.C., thereby indirectly helping the accused to get the benefit of default bail.

7.The defacto complainant filed an affidavit stating that on 14.03.2022 some unknown persons searched and reached them, attempted to tamper the witness to fizzle out the case of its rigor. For the threat and to dissuade the witnesses, a complaint was lodged to the Pollachi Police Station on 22.03.2024 but they failed to receive the complaint and take any action. Thereafter, through registered post complaint was sent and still no action was taken. In this case, A4/Arusamy @ Ponnusamy is still absconding and no steps taken to apprehend the accused. The victim further submitted that the wife of Sengottaiyan was sanctioned the compensation amount of Rs.6 lakhs following G.O.Ms.No.95 Social Welfare (CV.POA) Department dated 29.08.2016 and as regards the defacto complainant/Kumar, compensation amount of Rs.62,500/- is yet to be paid. Hence, she strongly opposed this appeal.



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8.The learned Additional Public Prosecutor opposed the appellant's contention and filed a counter affidavit of Murugan, Special Sub Inspector of Police, Udumalpet Police Station claiming that Sengottaiyan had been paid Rs.6 lakhs and as regards the defacto complainant, the amount of Rs.62,500/- could not be paid since he had no permanent proof of residence and he had no bank account and identification proof. Now the victim applied for Aadhaar card and after getting his identity proof, the amount of Rs.62,500/- can be paid. He further averred in the affidavit that A1 granted bail by the Principal Sessions Judge, Tiruppur in Crl.M.P.No.376 of 2024 and A2, A3, A5 and A8 granted bail in Crl.M.P.No.378 of 2024 on 20.02.2024, he took the defacto complainant to the Court as per the oral instructions of the learned Special Public Prosecutor and when A6 granted bail in Crl.M.P.No.421 of 2024 on 22.02.2024 again as per the oral instructions of the learned Special Public Prosecutor, the defacto complainant was produced before the Principal Sessions Judge, Tiruppur. But he fairly submitted that the presence and objections of the defacto complainant are not recorded or mentioned in the bail orders of the accused.

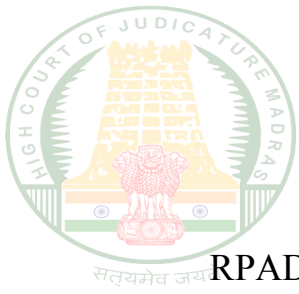


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9.This Court finding contradictions in the affidavit of the defacto complainant and the Special Sub-Inspector of Police as regards service of notice and presence of the victim before the Special Court while considering the bail application, in compliance to Section 15-A(3) of SC/ST Act called for report from the learned Principal District Judge/Special Judge, Tiruppur through the Registrar General of this Court. The learned Principal Special Judge, Tiruppur in D.No.2591 of 2024 dated 26.03.2024 sent a reply confirming that the appellant herein approached the High Court in Crl.O.P.No.417 of 2024 and this Court by order dated 10.01.2024 directed the appellant to surrender before the Trial Court with a direction to the Trial Court to consider the bail application of the petitioner on the same day of his surrender. The bail application filed by the appellant was dismissed on the ground that allegation levelled against him are serious and hence, not inclined to consider the bail application. In the report, it is mentioned that it the learned Special Public Prosecutor used to intimate the defacto complainant through the respondent police about the pendency of the bail application or any application under the Act and no notice was sent by

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RPAD to the defacto complainant from the Court. Further, in this case the appellant surrendered before the Special Court pursuant to the order of the High Court in Crl.O.P.No.417 of 2024 and it is also admitted by the learned Special Judge that no records filed before the Special Court by the Special Public Prosecutor to indicate that notice was served on the defacto complainant. From the report, it is seen that in Crl.M.P.No.186 of 2024, the objections of the defacto complainant considered and the same is recorded in the order. In Crl.M.P.No.282 of 2024 and Crl.M.P.No.420 of 2024, the defacto complainant neither informed nor objections heard. It is also to be noted when the bail was granted to accused in Crl.M.P.No.376 of 2024, Crl.M.P.No.378 of 2024 and Crl.M.P.No.421 of 2024, Section 15-A(3) of SC/St Act not complied with.

10.Considering the submissions made and on perusal of the materials, the sum and substance is that the defacto complainant was not informed, no summons issued and his objections were not heard in any of the bail applications as mandated under Section 15A(3) of the SC/ST [POA] Act, duty is cast upon the Investigating Agency as well as the Courts to be



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sensitive to the plight and sufferings of the deprived and weaker section both by physical and physiological means. Chapter IV-A and Section 15A of SC/ST Act brought in to safeguard the right of victims, their rights cannot be deprived and no reason is acceptable. Further, as per Rule 7 of SC/ST Rules, the Investigating Officer to conduct investigation and file a final report in the cases without delay. As per Section 4 of the Act, any public servant willfully neglects his duty required to be performed by him under this Act and the Rules, if violates, they can be prosecuted. Though in Section 14 of the Act, the procedures are contemplated, but it is seldom followed; Duty is cast upon both on the Investigating Officer and the Special Court to ensure implementation of SC/ST Act without delay, with participation of the victims and to give relief to them. From the above, it is seen that there have been laxity in adhering to the Act and Rules. It is for the concerned officers and the Superior officers to take appropriate measure for the violation in this regard. It is informed by the legal aid counsel appearing for the third respondent that already cancellation of bail petitions filed for suppressing the facts and fraud committed in obtaining the bail, in Crl.A.SR.Nos.18114/2024, 18115/2024 and 18116/2024. It is for the legal



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aid counsel to further pursue the cancellation of bail petitions and take it to its logical end.

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11.Further, granting of bail in cases under SC/ST Act cannot be on the ground of period of detention or the stage of investigation, it has to be considered on the gravity and nature of the offence. From the above, it is seen that the appellant along with other accused committed gruesome murder by tying the innocent persons for injured hens and cocks. The accused seems to value the life of domestic bird to be precious than a human life, only for the reason that the person hails from deprived and marginalized society. The family members of the victim are shattered in a state of shock and fear. In view of the same, this Court is not inclined to grant bail to the appellant.

12.Accordingly, the Criminal Appeal stands dismissed.

13.This Court appreciates Ms.Lavanya Thirumalai, appointed as legal aid counsel for the third respondent for her strenuous effort made in



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contacting the victims, collecting details and putting forth the plight of victims before this Court and in taking steps to address the injustice caused to the victims.

15.04.2024

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

To

- 1.The Deputy Superintendent of Police,
Udumalpet Police Station,
Udumalpet, Tiruppur District – 642 126.
- 2.The Inspector of Police,
Udumalpet Police Station,
Tiruppur District – 642 126.
- 3.The Principal Sessions Judge,
Tiruppur.
- 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

cse

Pre-delivery order made in

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