



CrI.A.No.46 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 01.02.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.46 of 2024

1.Siva

S/o.Thirunavukarasu

2.Arivazhagan

S/o.Govindan

3.Elumalai

S/o.Annamalai

... Appellants/Accused 1, 3 & 4

Vs.

1.State rep. by

The Deputy Superintendent of Police,
Thanipadi Police Station,
Tiruvannamalai District.

2.L.Manjunathan

... Respondents

Prayer: Criminal Appeal filed under Section 14A(2) of the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, 1989, to set aside the order of the learned Special Court for Trial of cases under SC/ST (POA) Act, Tiruvannamalai passed in CrI.M.P.No.1995 of 2023 dated 29.12.2023 and enlarge the appellants on bail in connection with the case in Cr.No.482 of 2023 on the file of the 1st respondent police.



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For Appellants : Mr.R.Sathiyaraj
For Respondent-1 : Mr.C.E.Pratap
Government Advocate (Crl. Side)
For Respondent-2 : Mr.M.Subash

JUDGMENT

This Criminal Appeal has been filed to set aside the impugned order in Crl.M.P.No.1995 of 2023 dated 29.12.2023 passed by the learned Special Judge, Special Court for Trial of cases under SC/ST (POA) Act, Tiruvannamalai and enlarge the appellants on bail in connection with Crime No.482 of 2023 on the file of the first respondent Police.

2.This Court, on 22.01.2024, 30.01.2024 & 31.01.2024, had passed the following orders:

Order, dated 22.01.2024:

“The second respondent/de-facto complainant is present before this Court in person. He seeks some time to engage a counsel.

2.Today, the learned counsel for the petitioner served the copies of the petition and typed set of papers to the second respondent, who had received and acknowledged the same.



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3. Post the case on 30.01.2024.”

Order, dated 30.01.2024:

“On last hearing, the 2nd respondent/defacto complainant appeared before this Court and received the copies and informed that he himself would represent his case.

2. Today, when the matter is taken up hearing, the 2nd respondent is not appeared.

3. In view of the above, Registry is directed to print the name of the 2nd respondent/defacto complainant in the cause list.

4. Post the matter on 31.01.2024.”

Order, dated 31.01.2024:

“The learned counsel for the appellants submits that the defacto complainant is motivated and lodged a false case against the appellants. The defacto complainant admittedly is settled and working in Chennai. The defacto complainant had come to the Village for temple festival where he had some misunderstanding with few of the Villagers and hence, he concocted a story as though there is a division in the Village and the people belonging to the Colony are being discriminated. In this case, the defacto complainant lodged a complaint even against a mentally retarded person and for that reason only, the Lower Court had not remanded A2 finding that he is a mentally retarded person.



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He further submitted that all the other accused have been falsely implicated.

2.Learned Government Advocate (CrI. Side) seeks time to file counter. He would submit that he is aware that the appellants were in prison from 05.12.2023 and 60 days is going to get over in another two days and they will be entitled for statutory bail shortly. He further submitted that he had impressed upon the respondent police to come for preparing counter but they insisted that they will make ready the counter. Further, he ensured that in any event, counter will be filed tomorrow.

3.The learned counsel for the second respondent/defacto complainant submits that in this case it is not abuse or calling of the community name against an individual, it is discrimination and boycott of members of Scheduled Caste community. On 13.09.2023 one Siva went to the shop of A1, who is running a Freezer Box Service for the dead persons, on the death of his father to hire a freezer box but was refused for the reason that the person died belongs to Scheduled Caste Community and he will not permit the dead body of scheduled caste to be placed in freezer box owned by him. A2 is a Barber who refused to trim the hair of one Dinesh since he belongs to Scheduled Caste community and thereafter, he went to the Barber shop of A3 who



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also refused to do hair cut, since Dinesh belongs to Scheduled caste community. A4 is running a hotel, when the defacto complainant went there to have his food, he was denied entry, he was discriminated and sent out since he belongs to Scheduled Caste community. On the complaint of the defacto complainant, a case was registered in Crime No.482 of 2023 for the offence under Sections 153(A)(1)(a) of IPC r/w. Sections 3(1)(u), 3(1)(za)(D) of SC/ST[POA] Act and Section 4(1) of PCR Act.

4.Post the matter on 01.02.2024 for filing counter.”

3.In continuation and conjunction to the above orders, this Court is passing the following order. Today, the learned Government Advocate (CrI. Side) has filed his counter.

4.Today, Mr.S.Murugan, Deputy Superintendent of Police, Thanipadi Sub Division is present before this Court along with the CD file. On perusal of the same, it is seen that A2 was taken to the Christian Medical College Hospital for Medical evaluation of his mental disorder. It is seen that A2 has been visiting the hospital and taking treatment from the year 2007. It is also seen that there are 14 witnesses examined and statements recorded. The



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Community Certificate of the appellants as well as the de-facto complainant

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and other witnesses have been obtained. The medical records have been collected, investigation is at the penultimate stage and the charge sheet is to be filed shortly.

5.The learned counsel for appellants submitted that the first and second appellants are Dhobies and they do menial work of washing and ironing the clothes. They are minorities in the village and they have no reason to exhibit their dominance. The third appellant belongs to Most Backward Community. All the appellants hail from marginalized community having no marked difference in the social status. He further submitted that all the appellants have got no bad antecedents. They were living in the village in harmony. Further, they shall file an affidavit expressing solidarity before the concerned Court as soon as they are released on bail within fifteen days from the date of release affirming that no discrimination would be patronized or followed by them in any manner. Further, he submitted that their only apprehension is that this affidavit should not be looked against them during the investigation or trial.



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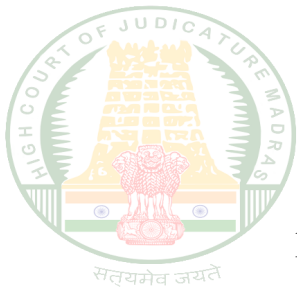
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6.Considering the submissions made and on perusal of the materials available on record, it is seen that investigation is at the penultimate stage and charge sheet to be filed shortly, this Court is inclined to grant bail to the appellants subject to the following conditions:

(i)The appellants shall execute a bond for a sum of Rs.5,000/- (Rupees five thousand only) each, with two sureties each for a like sum to the satisfaction of the learned Sessions Judge (FAC), Special Court for Trial of cases under SC/ST (POA) Act, Tiruvannamalai;

(ii)the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Judge may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(iii)the appellants shall appear before the first respondent Police on every Monday till the filing of charge sheet. After executing all the sureties within 15 days from coming out of



prison, the appellants shall file affidavit before the concerned

WEB COPY Court which reads as follows:

“I, as a Citizen of India, having utmost faith in the Constitution of India, am quite aware that 'Untouchability' has been abolished under our Constitution. I, hereby, take pledge that knowingly or unknowingly, I will not practice social discrimination based on untouchability either by words or deeds or in any other manner. I am aware that it is my duty to serve in a true, honest and faithful manner, as per the basic principles laid down under the Constitution, to create an independent Society, without any discrimination. I solemnly affirm that this would stand to speak forever the faith I have in the Indian Constitution.”

(iv)The appellants shall not give any inconvenience or trouble knowingly or unknowingly to the 2nd respondent, failing which, the bail shall be cancelled without any further reference.

(v)the appellants shall not commit any offences of similar nature;



(vi)the appellants shall not abscond either during

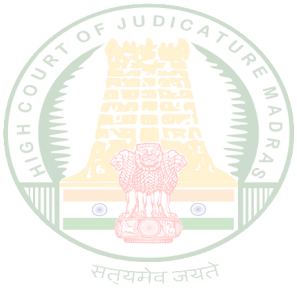
WEB COPY investigation or trial;

(vii)the appellants shall not tamper with evidence or witness either during investigation or trial;

(viii)on breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the appellants in accordance with law as if the conditions have been imposed and the appellants 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]*;

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

7.In view of the above, the impugned order in Crl.M.P.No.1995 of 2023, dated 29.12.2023 passed by the learned Sessions Judge (FAC), Special Court for Trial of cases under SC/ST (POA) Act, Tiruvannamalai is set aside and the Criminal Appeal is, accordingly, allowed.



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M.NIRMAL KUMAR, J.

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

Note: Issue Order Copy on 01.02.2024.

To

- 1.The Sessions Judge (FAC),
Special Court for Trial of cases
under SC/ST (POA) Act,
Tiruvannamalai.
- 2.The Deputy Superintendent of Police,
Thanipadi Police Station,
Tiruvannamalai District.
- 3.The Superintendent,
Central Prison, Vellore.
- 4.The Public Prosecutor,
High Court, Madras.

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