

(2005) 12 MAD CK 0081

In the Madras High Court

Case No : Criminal O.P. (MD) No. 8203 of 2005

Sheshammal

APPELLANT

Vs

State by Inspector of Police and Others

RESPONDENT

Date of Decision : 08-12-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 366, 376

Citation : (2006) 1 ALT(Cri) 453

Hon'ble Judges : M. Chockalingam, J

Bench : Single Bench

Advocate : M. Karunanithi, for the Appellant; A. Muthukaruppan, Government Advocate for Respondent No. 1, Mohideen Basha, for V. Kannan, for the Respondent

Judgement

M. Chockalingam, J.—The criminal original petition has been brought forth seeking cancellation of bail made by the Sessions Judge, Thanjavur during vacation on 6.5.2005 in Cr.M.P. No. 917 of 2005 in a case registered by the first respondent police against the respondents 2 to 4 in Crime No. 281 of 2004 for the offence under Sections 366 and 376, I.P.C. for an occurrence took place on 19.12.2004.

2. The gist of the case of the prosecution was that a minor girl, who was aged about 15 years and who is the daughter of the petitioner herein, was kidnapped by the respondent No. 2, who is the driver employed therein, with the assistance of respondents 3 and 4; that originally, a case u/s 366, I.P.C. was registered on a complaint given by the petitioner on 20.12.2004; that the respondents 2 to 4 were arrested and remanded to judicial custody on 3.5.2005; that the girl was also secured and an application for the custody of the girl was ordered by the learned Judicial Magistrate, Pattukkottai; that when they moved for bail before the Court of Sessions, the same was also granted by an order, dated 6.5.2005 by the said Court and that aggrieved over the said order of granting bail in favour of the respondents 2 to 4, the defacto complainant, the mother of the victim girl has

brought forth this petition before this Court.

3. Heard the learned Counsel for the petitioner, learned Counsel for the State and also the learned Counsel for the respondents 2 to 4.

4. Admittedly, a case came to be registered by the respondent police in Crime No. 281 of 2004 on the complaint given by the petitioner, alleging that the minor daughter was kidnapped. After the case was registered, investigation was taken up and the girl was secured and she was subjected to medical examination and found to be pregnant and thus, the provision u/s 376, I.P.C. was also added and the investigation was on. Pending investigation, the respondents 2 to 4 herein applied for bail before the Court of Sessions and it came up for consideration. It is quite evident from the order itself that the prosecution raised its objection forcibly stating that the girl was minor and apart from that she was also subjected to rape and under the circumstances, investigation was also pending and hence, it is not a fit case for bail. Even after recording the said objections, the Sessions Court has granted bail, stating that when she was produced before the Magistrate, she has stated that she went on her own accord; that she was a major and under the circumstances, it is a fit case for granting bail and accordingly, bail was granted. While the matter stood thus, this criminal original petition has been filed seeking cancellation of bail.

5. After careful consideration of the rival submissions made, this Court is of the considered opinion that the order of the lower Court, granting bail, has got to be set aside. In the instant case, according to the prosecution, the victim girl, who is the daughter of the petitioner herein, was minor aged about 15 years at the time of occurrence. After she was secured, she was subjected to medical test, which would clearly indicate that she was pregnant by 4 or 5 months and thus, the prosecution was able to add the provision of Section 376, I.P.C. In a case like this, where the prosecution comes forward with a case that the victim was minor, who was kidnapped and raped, the Court should have applied its mind as to the seriousness of the offence alleged to have been committed. The Contention of the respondents 2 to 4 that she was major and there is a school certificate available in that regard cannot be countenanced.

6. According to the learned Counsel for the petitioner, the marriage of the petitioner took place in the year 1985 and the child was born in the year 1986 and certificate was also available to show the same. When an objection was raised by the prosecution at the time of consideration of bail by the Court of Sessions, the Court of Sessions did not care to take into consideration the objections. In a case like this, where the prosecution was able to come forward with an objection stating that the girl was minor, who was kidnapped and subjected to rape, the Court should have immediately dismissed the application, pending investigation. Despite all the facts and circumstances were recorded, the Court of Sessions has granted bail. Even now, the investigation is pending.

7. Further, the learned Counsel for the respondents 2 to 4 would contend that

bail granted in respect of Nos. 2 and 3, who are the respondents 3 and 4, need not require to be cancelled, since they had no involvement in the crime. According to the prosecution, they were the persons, who assisted the second respondent at the time of commission of offence. Under the circumstances, before investigation is over, it is not fit or proper to sustain the order of the lower Court, granting bail. Hence, the said contention cannot be countenanced and the same is rejected.

8. Under the circumstances, in view of the seriousness of the offence, which was brought to the notice of the Court, the order of the lower Court granting bail, in the opinion of the Court, has got to be necessarily set aside. Hence, the order of the lower Court granting bail is set aside and the bail granted to the respondents 2 to 4 is cancelled. This petition is ordered accordingly.