

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
19~06~2020	23~06~2020

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl.A.No.249 of 2020

The State rep.by.
Assistant Commissioner of Police,
Central Crime Branch
Vepery, Chennai.
(Cr.No.214 of 2020)

... Appellant/Respondent

.Vs.

1. Mr.R.S. Bharathi

.. Respondent/Petitioner/Accused

2. Mr.Kalyana Sundaram

.. Respondent/Respondent/
Defacto Complainant

Prayer: Appeal filed under Section 14A of the SC & ST (Prevention of Atrocities) Act 1989 to set aside the order passed in Crl.M.P.No.7506 of 2020 dated 01.06.2020 granting bail to the respondent by Learned Special Judge at Chennai under SC & ST (Prevention of Atrocities) Act 1989.

For Appellant : Mr. K. Prabhakaran

Additional Public Prosecutor

For Respondents : Mr.R.Shunmugasundaram
Senior Counsel for
Mr.S. Manuraj [for R1]

Mr.V. Raghavachari
Counsel for
Mr.C.P. Palaniswamy [for R2]

JUDGMENT

This Criminal Appeal has been filed to set aside the order passed in Crl.M.P.No.7506 of 2020 dated 01.06.2020 granting bail to the respondent by Learned Special Judge at Chennai under SC & ST (Prevention of Atrocities) Act 1989.

2. The brief facts leading to file this Appeal is as follows:

2(a) The First Information Report came to be registered on 12.03.2020 by the Inspector of Police, E-3 Teynampet Police Station in Cr.No.119 of 2020 u/s 3(1)(u) and 3(1)(v) of SC/ST (Prevention of Atrocities) Act 1989 for the alleged contents and derogative statements made against the late Honourable Justice A. Varadharajan and other 7 or 8 of lower caste Judges of the High Court. The basis

for the First Information Report is that the accused Member of Rajya Sabha and Organising Secretary of DMK political party addressed the audience of more than 100 numbers consisting of DMK party, media and general public on 15.02.2020 in the event organised by the party namely “Kalaigñar Vasagar Vattaram” organised at Anbagam, Anna Arangam, Teynampet, Chennai. In the above meeting the accused made a disrespectful remarks on members of oppressed class stating that Hon'ble Justice Varadharajan and 7 or 8 other Judges from lower caste become the Judges of High Court because of alms rendered by the former Chief Minister Mr. Karunanidhi. The above speech disrespects the late Justice Varadharajan who is held in high esteem by the Scheduled Castes and Scheduled Tribe people that he is an inspiration of thousand of lawyers belonging to lower caste. The verbatim of statements which contained in the complaint has not been reproduced. Based on such statement the information came to be lodged on 12.03.2020 before E-3 Teynampet Police station for the offences under Section 3(1)(u) and 3(1)(v) of SC/ST (Prevention of Atrocities) Act 1989.

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2(b) After registering the FIR in Cr.No.119 of 2020, as no progress shown by the police, the defacto complainant moved this Court in Crl.O.P.No.7521 of

2020. By Order dated 12.05.2020 this Court directed the investigating officer to complete the investigation and file a final report within thirty days from 12.05.2020. Thereafter, it appears that the investigation was transferred to the Assistant Commissioner of Police, Central Crime Branch, Greater Chennai on 22.05.2020 and again the case was re-registered in CCB-1 Cr.No.214 of 2020 u/s 3(1)(u) and 3(1)(v) of SC/ST (Prevention of Atrocities) Act, 1989 and the investigating officer arrested the accused very next day on 23.5.2020 at about 05.40 hours at his residence. Thereafter, he was produced before the Principal Sessions Judge/Special Judge for judicial custody. Prior to such arrest the accused has filed Crl.O.P.No.7929 of 2020 before this Court seeking direction to consider his application for bail on the date of his surrender, which was pending. In the meanwhile he was arrested on 23.05.2020 i.e. on Saturday.

2(c) The Principal Sessions Judge, Chennai, after hearing the arguments of both sides granted interim bail to the accused till 31.05.2020 on his personal bond and directed the accused to surrender before the Special Court on 01.06.2020. The Order granting interim bail was challenged by the State in Crl.O.P.No.7930 of 2020 before this Court. Similarly, Crl.A.No.234 of 2020 also filed by the State.

This Court in a Common Order dated 30.05.2020 directed the trial Court to consider the bail application of the accused on the same day on his surrender in connection with the Cr.No.214 of 2020 and pass orders on merits and dismissed the Appeal filed against the interim bail in Crl.A.No.234 of 2020. Based on the direction of this Court and as per the interim order of the Principal Sessions Judge, the accused surrendered before the trial Court and filed application seeking bail. The learned trial Court Judge heard the State as well as the Defacto Complainant and accused. After elaborate discussion the learned Principal Sessions Judge incharge granted bail by its order dated 01.06.2020. The above order has been now put into challenge.

2(d) The learned trial judge while considering the petition for bail took note of the submission of the defacto complainant that he has no objection for releasing the accused on bail and finally granted bail to the accused. He has also considered other submissions of the defacto complainant and considering the nature of allegations the manner in which First Information Report came to be filed after one month after the alleged offence, thereafter, the matter has been transferred after two months to the Centrral Crime branch and the investigating officer

arrested the accused the very next day and further taking note of the fact that according to the prosecution the contention of the speech of the accused is already available on record and the transcribed copy is also produced, the custodial interrogation might not arise and also considering the Covid 19 situation, enlarged the accused on bail on his executing a bond for a sum of Rs.10,000/- with other usual conditions. Challenging the same, the present Appeal is filed.

3. Mr.K. Prabhakaran, learned Additional Public Prosecutor vehemently contended that the trial court has not followed the procedure properly and the offence registered against the accused is very serious in nature and will have a serious impact in the society. The accused is not an ordinary layman, he is a member of Rajya Sabha. His utterance in the public meeting disrespecting the judges belonged to the minority community certainly humiliated the members of Scheduled Castes and Scheduled Tribes. The entire complaint read together makes it clear that the offence is very serious in nature. The Special Court has not taken into consideration of the object of the Special Act while extending the benefit of bail. The very restriction of the anticipatory bail under the Special Act itself clearly indicate that these offences are very serious in nature. Even the

offences are minor in nature, the gravity of the offence is more, since it will have an impact on the society, particularly the members of Scheduled Castes and Scheduled Tribes. If the Act is not strictly implemented, such utterance by the leaders will bring the division among the citizens of India. Trial Court has not given proper explanation as to why the accused enlarged on bail. Since the accused denied the very contents, it is incumbent upon the prosecution to prove the contents contained in the CD. Therefore, custodial interrogation is very much required to take voice samples. His arrest was necessitated for custodial interrogation to bring home the guilt of the accused.

4. Further the learned Additional Public Prosecutor submitted that during the interim bail stage no opportunity was given to the defacto complainant. That is also against the very spirit of the Act. Hence, submitted that the offence alleged against the accused is serious in nature, custodial interrogation is required to take voice samples of the accused. Further, the learned Special Judge has swayed away by the facts which are not at all relevant. The learned Special Court simply relied upon the Apex Court's Judgment in *suo motu* writ petition (C) No.1 of 2020, W.P.(C) Nos.445, 450 and 466 of 2020 dated 23.03.2020 with regard to :

Contagion of Covid 19 virus in prisons, and granted bail to the accused. In fact the Apex Court did not direct interim bail of the accused by the Courts. What was directed is to constitute high power committee to determine the category of the prisoners who should be released on bail or interim bail. Therefore, applying the above Judgment is also not proper by the trial Court. Hence, submitted that the appeal has to be allowed and bail has to be cancelled. In support of his submissions the learned Additioanl Public Prosecutor relied on the following judgments:

1. *Prathvi Raj Chauhan vs. Union of India (UOI) and others* **[AIR 2020 SC 1036 : MANSU/SC/0157/2020]**
2. *Ramesh Yashwant Prabhoo and others vs. Prabhakar Kashinath Kunte and others* **[AIR 1996 SC 1113 : MANU/SC/0982/1996]**
3. *Shafhi Mohammad vs. State of Himachal Pradesh* **[AIR 2018 SC 714 : MANU/SC/0058/2018]**
4. *State of M.P. and Others vs. Ram Kishna Balothia and others* **[AIR 1995 SC 1198 : MANU/SC/0239/1995]**

5. *State of Uttar Pradesh vs. Singhara Singh* [AIR 1964 SC 358 : MANU/SC/0082/1963]

6. *State vs. Hiremath* [AIR 2019 SC 2377 : MANU/SC/0807/2019]

5. Mr.V. Raghavachari, learned Senior Counsel appearing for the Defacto Complainant/2nd Respondent submitted that the accused is not an ordinary citizen; he is a Member of Rajya Sabha; person of such caliber is required to show utmost restraint while addressing the public, particularly, when utterances lead to offence and also humiliation of the members of Scheduled Castes and Scheduled Tribes. Though freedom of speech guaranteed under Article 19 of the Constitution of India same is subject to reasonable restrictions. Further Article 51 of the Constitution of India cast duty on the every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women. Therefore, the entire speech made by the accused is against the constitutional duties. Though constitutional duties are not enforceable by the Court, the Court has to take into consideration of such duties of the persons when the persons totally disobeyed the constitutional

responsibilities and duties and levelling derogatory statements and humiliating the particular section of people. The object of the SC/ST Act is to protect the members of Scheduled Caste and Scheduled Tribe from being subjected to various indignities, humiliations and harassment. When the act is brought to prevent such crime against the Members of Scheduled Caste and Scheduled Tribe, the scheme of the Act to be seen while granting bail. The manner in which Anticipatory Bail has been taken away by the legislature itself indicate that every offence reported under the Act to be dealt seriously. Therefore submitted that the trial Court ought not to have granted bail, considering the behaviour of the accused who is holding responsible position. Hence, it is his contention that bail ought not to have granted by the trial Court. He has also relied upon the following Judgments in support of his contention:

1. *S.Chezian alias Sakthivel vs. Commissioner of Police*
[2019 SCC online Mad 514 : (2019) 2 CTC 135]

2. *National Investigation Agency vs. Zahoor Ahmad Shah*
Watali [AIR 2019 SC 1734 : MANU/SC/0458/2019]

6. Whereas Mr.R. Shunmugasundaram, learned Senior Counsel appearing

for the Accused/1st Respondent submitted that the defacto complainant in fact has not opposed to grant of bail to accused before the trial Court. Now he resiled from his submission and sailing with the State. This appeal is nothing but due to the political animosity, since the accused belongs to the opposition party. The trial Court has clearly considered various factors in granting bail after hearing the defacto complainant. Further, it is his contention that the entire allegation is based on the alleged transcription produced by the prosecution. Whether or not such transcription are proved or admissible, cannot be gone at this stage, since the entire materials relied upon by the prosecution are electronic evidence. Before relying upon the electronic evidence the admissibility of the documents has to be established besides the authenticity of the contents has to be established. Therefore, his contention is that the trial Court has clearly considered all the relevant aspects and exercised discretion in granting bail. Without bringing any material to show that the accused violated bail conditions or committed any other offence during the bail period or repeated any such alleged offence the bail cannot be cancelled. It is his contention that personal liberty of the person guaranteed under the constitution cannot be curtailed. When the Court has elaborately dealt the various factors and granted bail, the liberty of the person cannot be curtailed at

the whims and fancies of the State, particularly due to political reasons. Hence, it is his contention that the appeal lacks *bona fide* and merit and the same is liable to be dismissed. In support of his contention, the learned Senior Counsel relied upon the following decisions:

1. *Karibasappa Beturu vs. State of Karnataka* [2020 SCC Online Kar 416]

2. *Prathvi Raj Chauhan vs. Union of India (UOI) and others* [2020 SCC Online SC 159 :AIR 2020 SC 1036 : MANSU/SC/0157/2020]

7. Heard both sides.

8. In *Prathvi Raj Chauhan's case* (*supra*) the Honourable Supreme Court has held as follows:

“33. It is important to reiterate and emphasize that unless provisions of the Act are enforced in their true letter and spirit, with utmost earnestness and dispatch, the dream and ideal of a casteless society will remain only a dream, a mirage. The

marginalization of scheduled caste and scheduled tribe communities is an enduring exclusion and is based almost solely on caste identities. It is to address problems of a segmented society, that express provisions of the Constitution which give effect to the idea of fraternity, or bandhutva (???? ??) referred to in the Preamble, and statutes like the Act, have been framed. These underline the social – rather collective resolve – of ensuring that all humans are treated as humans, that their innate genius is allowed outlets through equal opportunities and each of them is fearless in the pursuit of her or his dreams. The question which each of us has to address, in everyday life, is can the prevailing situation of exclusion based on caste identity be allowed to persist in a democracy which is committed to equality and the rule of law? If so, till when? And, most importantly, what each one of us can do to foster this feeling of fraternity amongst all sections of the community without reducing the concept (of fraternity) to a ritualistic formality, a tacit acknowledgment, of the “otherness” of each one’s identity.”

Absolutely there is no dispute with regard to the above judgment. The provisionos

of the Act are to be strictly enforced to achieve the object of the very Act which enacted for the benefit the sections of the citizens of this country.

9. In ***Shafhi Mohammad's*** case (supra) the Honourable Apex Court has held as follows:

“14.The applicability of procedural requirement under Section 65B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said Sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in absence of certificate under Section 65B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65B(h) is not always mandatory.”

The apex Court in the above judgment held that furnishing certificate under Section 65B would apply only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. It is also relevant to note that matter relating to Section 65(B) of the Indian Evidence Act is pending before the larger Bench of Apex Court for authoritative pronouncement.

10. In **Ram Kishna Balothia's** case (supra) the Apex Court held that Section 18 of the SC/ST Act cannot be considered as violative of Article 14 and 21 of the Constitution.

11. In **Singhara Singh's** case (supra) The Honourable Supreme Court has held that when the confession of accused is not recorded by the Magistrate as per law is not admissible in evidence. To prove such confession oral evidence of the Magistrate is not admissible.

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12. In **M.R.Hiremath's** case (supra) the Honourable Apex Court reiterated that need for production of the certificate under Section 65(B) of the Evidence Act

would arise only when the electronic record is sought to be produced in evidence.

13. In ***L.Chezian @ Sakthivel's*** case (supra) this Court has held as follows:

“11. The Constitutional rights finds its pair in the Constitutional duties or responsibilities. And, he who is conscious of his Constitutionally guaranteed rights and demands it, should also be prepared to submit to performing the Constitutional duties that goes with it. Time has come for the Courts not just to be a sentinel on the qui vive against State's attempts to invade the Constitutional rights of the citizens, but also against flirting tendencies of the citizens not to abide by their Constitutional responsibilities or duties. The latter may not be enforceable, yet they cannot be ignored.”

14. In ***Karibasappa Beturu's*** case (supra) the High Court of Karnataka has held as follows:

“17. So far as the alleged CDs, they being electronic evidence, admissibility of those documents have to be examined at trial. Under the circumstances, it cannot be said that the complainant makes out prima facie case of applicability of the provisions of the Act. Therefore, the

matter is fully covered by the judgment of the Supreme Court in Prathvi Raj Chauhan's case referred to supra. Bar of sections 18 and 18A of the Act is not applicable to the facts and circumstances of the case.”

15. Keeping in mind with the above judgments when the materials have been perused. As narrated in the second paragraph of this judgment, the facts leading to file this appeal, it is undisputed fact that certain remarks said to have been made by the accused during the meeting in the political party office on 15.02.2020. According to the defacto complainant such remarks have caused humiliation to the Scheduled Caste members particularly late Justice Varadharajan who was in the bench of the Apex Court, and also against some other judges belong to the Scheduled Caste. Whether such statements would attract the provision of Section 3(1)(u) or 3(1)(v) of the SC/SCT (Prevention of Atrocities) Act or not are matter of trial. Therefore, this Court at this stage restrain itself from expressing any views as to whether such utterance attracts the offence or not. It is for the prosecution to establish before the trial court that such utterance attracts penal consequences. Those things can be seen only after full trial.

16. Now, the issue revolving around as to the validity of the bail order granted to the accused by the Special Court. As already indicated, accused was arrested on the very next day, immediately after the investigation was transferred to the Central Crime Branch. On his production before the Special Court, after hearing both sides, the special Court has granted interim bail taking note of the lock down situation and spike in Covid 19 at the relevant point of time. Prior to that the accused has already filed an application before this Court for direction to accept his surrender and consider his application on the same day on his surrender. This Court, as already stated, by order dated 30.05.2020 granted relief to the accused and directed the trial Court to pass order on the bail application on the date of his surrender. Further the challenge made to interim bail is also dismissed by this Court by its order dated 30.05.2020. No further challenge was made to order granting interim bail. What was challenged before the Honourable Supreme Court is an order granting bail on merit by order dated 01.06.2020 in SLP (Crl.) Nos.2614, 2615 of 2020. However, same were withdrawn. Thereafter present appeal is filed before this Court challenging the order of Special Court dated 01.06.2020. It is relevant to note that the defacto complainant had lodged the complaint one month after the occurrence has not opposed the grant of bail before

the trial Court. Therefore, it is clear that once the order granting interim bail is already confirmed by this Court and no further challenge is made. Now, State or Defacto Complainant cannot challenge the same in these proceedings. Very curiously when the State has preferred appeal before this Court under 14(A) of the SC & ST (Prevention of Atrocities) Act 1989 the defacto complainant has argued for cancelling the bail. When his stand before trial Court was pointed out to the learned Counsel, the learned Counsel Mr.V. Raghavachari fairly submitted that his intention was not to oppose the bail, but bring to the notice of the Court the behaviour of the accused who is a Member of Rajya Sabha and he has not shown any remorse and not even regretted for making such comments, even though his statement had a serious impact on the society.

17. Though elaborate argument was made by the State for cancelling the bail, on a perusal of the order of the trial Court, this Court does not find any materials to countenance the contention of the State to hold that the trial Court viz.,the Special Court has granted bail without considering any materials or without hearing the defacto complainant etc., The trial Court has considered the nature of the offence, the delay in making complaint, the manner in which the

arrest was effected, thereafter exercised its discretion and granted bail, that too after the directions of this Court. It is relevant to extract the provision of the SC/ST Act under which the accused was arrested:

Sections 3(1)(u) and 3(1)(v) of the SC/ST (Prevention of Atrocities) Act read as follows:

3(1)(u) : *by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes;*

3(1)(v) : *by words either written or spoken or by any other means disrespects any late person held in high esteem by members of the Scheduled Castes or the Scheduled Tribes;*

18. The above offences attract the punishment with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine. Though the investigating officer shall not require any approval for arrest, if necessary, of any person accusation being committed he cannot ignore

the procedure provided under the SC/ST Act or the Criminal Procedure Code for effecting such arrest. It is also relevant to be noted that the special provisions contemplated with regard to the arrest either in the Code or under the Act as per Section 18(A) of SC/ST Act cannot be ignored by the Investigating Officer. In fact after the date of transfer of investigation arrest was made within 12 hours, which also weighed the mind of the trial Court to exercise the discretion. The other contention of the learned Additional Public Prosecutor that to prove the contents of the transcription voice sample is required, therefore, custodial interrogation is also required, cannot be countenanced for the simple reason that if the prosecution is really interested in prosecuting the accused keeping the very object of the Special Act, they ought to have completed the investigation within the time limit specified in the SC/ST Rules.

19. Be that as it may. Even assuming that voice samples of the accused are required for proving contents in CD, this Court is of the view that custodial interrogation is not at all required. Even any voice sample is required from the accused, prosecution can seek assistance of the Court, file an application for getting voice samples of the accused. Therefore, the liberty of the person cannot

be curtailed when the trial Court has exercised discretion properly in a judicial manner and granted bail.

20. As rightly pointed out by the learned Senior Counsel for the accused, the contents in the CD is always depends upon the proof and its authenticity. These are all the matter of evidence which has to be adduced by the prosecution at the time of trial. Therefore, at this stage, merely on the basis of the alleged contents and allegations this Court cannot come to the definite conclusion that such allegations are made by the accused. These are all matter of evidence before the trial Court. In such a view of the matter, this Court do not want to express anything on merits. At the same time this Court is also like to place on record that persons who are holding high office like accused who is not only senior member of the Bar and Member of Rajya Sabha and belong to political party and have several followers to follow him, he should show restraint while making any such remarks. Whether or not such remarks amount to offence or humiliation, such remarks should not lead to give an impression that same offends any section of society. Therefore the leaders who are in public life not only have responsibility but also constitutional duty to promote harmony and the spirit of common brotherhood amongst all the

people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women. They should know their responsibility, while addressing the gathering any utterance should not lead to create disharmony among the citizens of the country.

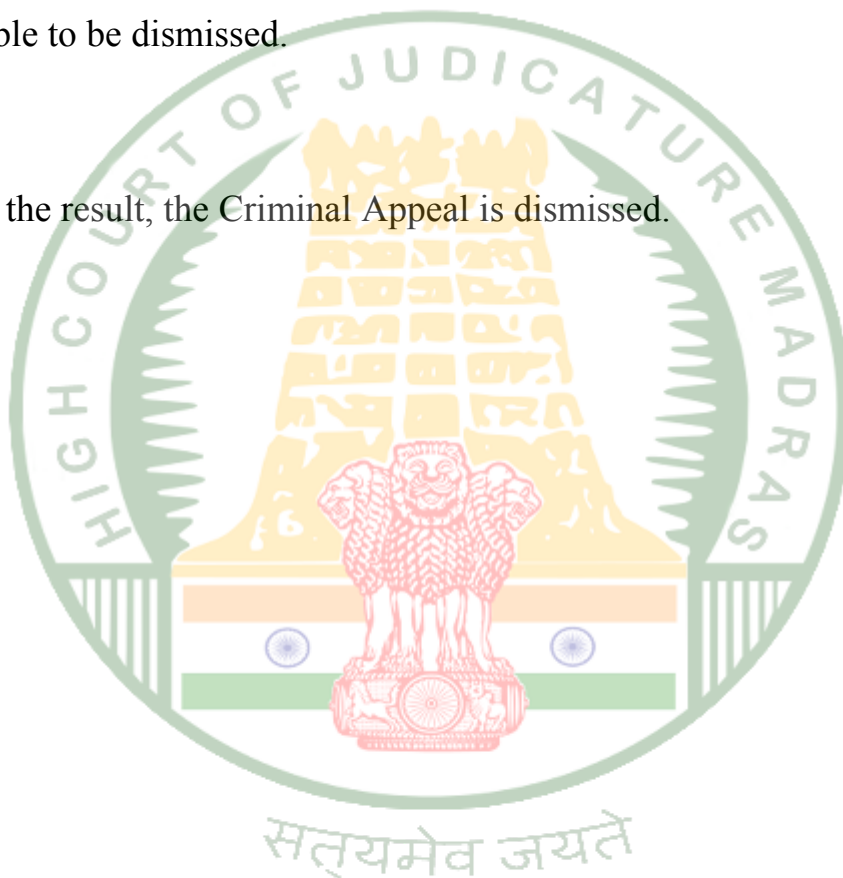
21. Be that as it may. Now, the crux of the matter is whether the prosecution has made out any ground to cancel the bail. Though several grounds were raised in the appeal, the main contention of the learned Additional Public Prosecutor is that since the provision of the Anticipatory Bail taken away by the SC/ST Act, the accused should not be given bail. Such contention cannot be countenanced. In fact, it will lead to the serious consequences. Mere tougher law and stringent legislations will not relieve the State from establishing the charges as per law. Every accused is presumed to be innocent till the guilt is proved. Therefore, the contention that jail is a rule and bail is an exception is accepted, then, it will not only infringe fundamental rights of the citizen but also will have serious consequences. Such submissions have no leg to stand. The power of cancellation of bail must be exercised with care and circumspection. Only when there are cogent and overwhelming circumstances shown by the prosecution,

normally the cancellation of the bail will be ordered. Since the cancellation of the bail jeopardise the personal liberty of the person the cancellation cannot be made in routine manner. This Court perused the order of the trial court, the trial Court has considered all the relevant materials and relevant aspects and indicated reasons and exercised discretion judicially. Therefore, when there is no supervening circumstances available in the matter, mere whims of the State, the bail granted cannot be cancelled.

22. It is not the case of the State that the accused disobeyed the bail conditions or misused the privilege of bail. Now it is well settled by various pronouncements that normally bail would be cancelled when it is established that (1) when the accused is involving in tampering of evidence during the investigation or during the trial. (2) When the person on bail commits similar offence or any heinous offence during the period of bail. (3) when the accused has absconded during the trial and the case is delayed on that account. (4) When the offence so committed by the accused that created serious law and order problem in the society. (5) The accused is becoming hazard to the peaceful living of the people. (6) when the superior court found that the lower court exercised his

judicial power wrongly. (6) when the accused has misused the privilege of bail. These are all the illustrative circumstances to cancel the bail. In the present case no circumstances shown by the State or the Defacto complainant for cancelling the bail. Hence this Court find that there is no merit in the appeal. Accordingly, the appeal is liable to be dismissed.

23. In the result, the Criminal Appeal is dismissed.

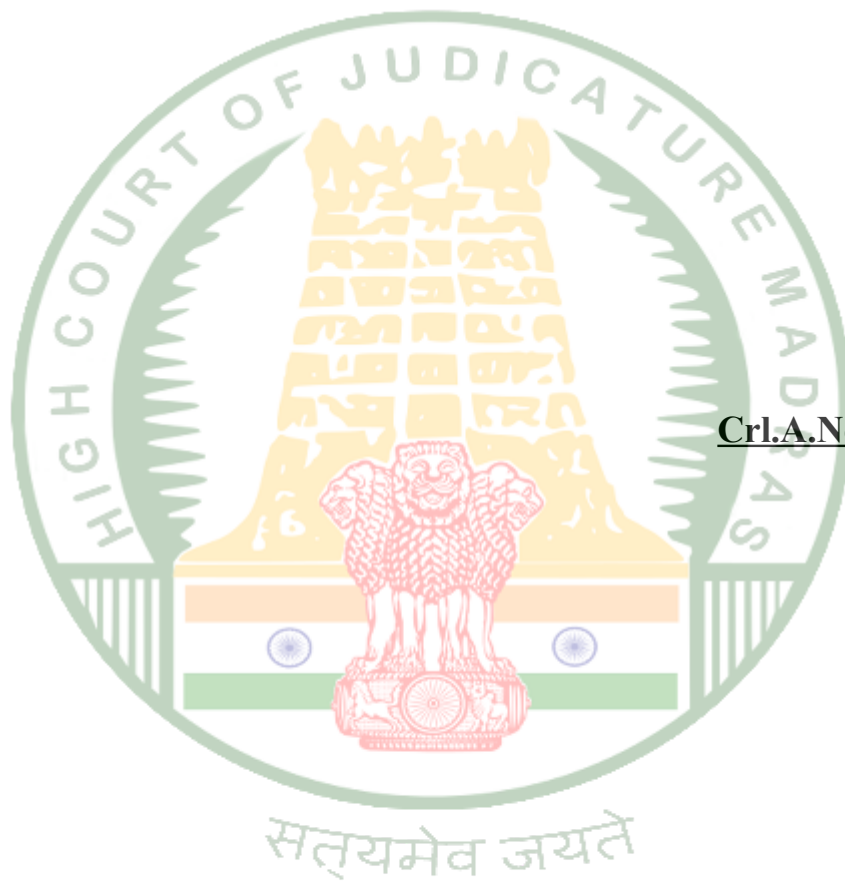


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N. SATHISH KUMAR, J.
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Judgment in:
Crl.A.No.249 of 2020

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23.06.2020