THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.10.2018
CORAM:
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA
Crl.O.P.No.18013 of 2018
and
Crl.M.P.No.9996 of 2018

1.Amsa

2.Subramani ... Petitioners

/Vs/
State Rep by:
The Inspector of Police
All Women Police Station,
Denkanikottai,
Krishnagiri District.
(Crime No.16/2017) ... Respondent

PRAYER: Criminal Original Case filed under section 438 of Cr.P.C., to enlarge the petitioners on Bail, in the event of arrest by the respondent in Crime No.16 of 2017 on the file of the respondent police.

For Petitioners : Ms.Kavitha Prasanna Durai

For Respondent : Mr.K.Prabhakar
Additional Public Prosecutor.

For Intervenor : Mr.Saravanakumar

O R D E R
This Criminal Original Case has been filed by the petitioners seek anticipatory bail in Crime No.16 of 2017 registered by the respondent police for the offences under Sections 5(1), 5(n), 6, 9(i)(1) and 9(i)(2) of the Protection of Children from Sexual Offences Act, 2012.

2. The case of the prosecution as per the defacto complainant one Kaviaya is that during the year 2016 while she was in her aunty's house, her aunty's the first accused son committed rape on her, due to which she suffered mental illness. Thereafter, the defacto complainant was taken to Nimhans Hospital at Bangalore for treatment where it was found that she was pregnant. When it was disclosed by the defacto complainant to her mother, she along with her daughter had gone to elders in the family and sought for justice. At that time, the first accused and his family members had given an undertaking before the elders stating that the first accused would marry the defacto complainant after the girl attains majority. Thereafter, while the defacto complainant was alone, the first accused and his parents had taken her to a temple and the first accused married her by compulsion and when it was questioned by the parents of the defacto complainant, the petitioners had threatened her. Thereafter, the first accused had married another person against the undertaking given by him in

the presence of the elders and cheated the victim girl and the other accused had supported the marriage of the first accused with another lady.

3. The learned counsel for the petitioners would submit that the accused and the defacto complainant are relatives and that on compulsion by the village panchayatdars to get his son married to the defacto complainant, the first accused was forced to comply with the demand. He would further submit that the petitioner and his wife are not aware of the age of the victim, and that an earlier complaint had been given before the Hosur All Women Police Station, wherein the girl had given a statement stating that she got married to the son of the petitioner with the consent of her parents and was living happily in her matrimonial home for one month and subsequently, she got mental illness and hence, went to her parental home for taking treatment and that she is fine at present and since she had not completed the age of 18 years, she had not joined her husband and is staying in her parental home. Facts such being so, as an afterthought, the false complaint has been given as if the petitioners' son committed rape of her and thereafter marriage was conducted forcefully. He would further submit that the main accused/A1, his son and wife were arrested and his wife alone has been let out on bail and he would submit that there is no necessity for custodial interrogation and would pray for grant of anticipatory bail.

4. The learned counsel for the intervenor would submit that the petitioner is the father of the main accused and would submit that the main accused his son was earlier charged during 2013 for kidnapping a minor girl and raping her and arrested and prosecuted under the POCSO Act 2013, and that he had faced trial and would submit that the son of the petitioner is a habitual offender under the POCSO Act. The son of the petitioner is aged about 30 years and that, the earlier case was registered by the All Women Police Station, Hosur, and the minor victim in the earlier case a close neighbour. He would further submit that the petitioner is being well aware of the criminal conduct of his son who is a habitual offender had allowed his son to commit the offence of rape of the victim girl in the present case, who is their relative and had also arranged for the farce marriage of the victim girl with their son to avoid prosecution. Further, on going through the statement of the girl recorded at the All Women Police Station, it seen that the girl had stated that she would like to stay with her parents till she attains majority and that the son of the petitioners should not get married to any other person and would submit that the petitioners and their family members are taking different stands before different Forums to escape from the clutches of law. He would submit that the petitioners' son had now married the victim in the earlier case and that she has also given birth to a son and the victim girl in the present case has been cheated by a farce marriage conducted in the presence of panchayatdars and would submit that anticipatory bail application of the petitioners should be dismissed.

5. The learned Additional Public Prosecutor would submit that the main accused A1 and the wife of the petitioner have been arrested and the wife of the petitioner has been enlarged on bail. He would submit that the petitioner being aware of the activities of his son had deceitfully conducted the farce marriage of the defacto complainant with their son to avoid registration of the second case. Now the main accused has married the victim in the earlier case.

6. The learned Additional Public Prosecutor would further submit that the Arrest Intimation of A1 in the earlier case has been served on the father and he is aware of the criminal activities of his son and that now he cannot feign ignorance of the criminal conduct of his son.

7. Taking into consideration, the above facts and circumstances the anticipatory bail is dismissed. Consequently, connected Miscellaneous Petition is also closed.

11.10.2018

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To

1. The Additional Public Prosecutor,
High Court of Madras.

2. The Inspector of Police
All Women Police Station,
Denkanikottai,
Krishnagiri District.

A.D.JAGADISH CHANDIRA,J.

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