

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**CRL.O.P.No.28818 of 2018

Kavitha

... Petitioner

Vs.

1. The State,
rep. by the Inspector of Police,
Pallikonda Police Station,
Vellore District.

2. Gokul @ Gokulakrishnan

... Respondents

Criminal Original Petition filed under Section 439(2) of Cr.P.C. praying to cancel the bail granted by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court) Vellore, Vellore District in favour of the second respondent in Crl.M.P.No.859 of 2018 dated 08.11.2018 in connection with Crime No.309 of 2018 pending on the file of the Inspector of Police, Pallikonda Police Station, Vellore District.

For Petitioner : Mr.E.Kannadasan

For Respondents

For R1 : Mrs.M.Prabhavathi
Additional Public Prosecutor
For R2 : Mrs.S.P.Arthi

ORDER

This petition has been filed to cancel the bail granted by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court) Vellore, Vellore District in favour of the second respondent in Crl.M.P.No.859 of 2018

dated 08.11.2018 in connection with Crime No.309 of 2018 pending on the file of the first respondent.

2. The learned counsel for the petitioner would submit that on 10.10.2018, the petitioner was lodged a complaint alleged that her minor daughter aged about 17 years was kidnapped by the second respondent/accused. The complaint was registered in Crime No.309 of 2018 for the offences under Sections 363, 366, 342 of IPC r/w Section 12 of POCSO Act as against the second respondent. On the said complaint, the second respondent was arrested and remanded to judicial custody on 08.11.2018. Subsequently, the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court) Vellore without considering the facts and circumstances of the case and also the gravity of the offence committed by the second accused, granted bail to the second accused on 14.11.2018. In fact, in the mean time, the petitioner filed a Habeas Corpus Petition in H.C.P.No.2546 of 2018, before this Court and the victim girl was produced before this Court. Pending H.C.P., the second respondent was released on bail. He would further submit that to meet the ends of the justice and also to save the victim girl from the hands of the second accused, he has to be secured again. Therefore, he sought for cancellation of bail already granted to the second accused.

3. The learned counsel appearing for the second respondent would submit that the second respondent fell in love with the victim girl aged about 17 years and on her own wish, the victim girl eloped with the second respondent. He has nothing to do with the allegation as alleged by the petitioner/defacto complainant and he never kidnapped the victim girl and never had any physical relationship with her. Further he submitted that in the Habeas Corpus Petition filed by the petitioner in H.C.P.No.2546 of 2018, the victim girl deposed that she refused to go with the petitioner/defacto complainant and hence she was sent to the Government Home for Girls, Murukkeri Village, Vellore District and even till today, the victim girl is in the Government Home for Girls.

3.1. Further the learned counsel appearing for the second respondent would submit that while the second respondent was granted bail, the learned Sessions Judge, Vellore, imposed conditions that he shall report before the learned Judicial Magistrate No.V, Vellore, daily at 10.30 a.m., until further order and on further condition that he should co-operate for the medical test if necessitates. Accordingly, the second respondent complied the conditions imposed by the learned Sessions Judge, Vellore. Therefore, there is absolutely no ground to cancel the bail granted to the second respondent.

4. The learned Additional Public Prosecutor appearing for the first respondent police would submit that initially the case was registered under Section girl missing and thereafter altered into under Sections 363, 366, 342 of IPC r/w Section 12 of POCSO Act as against the second respondent. On that complaint, the second respondent was arrested and remanded to judicial custody on 08.11.2018, subsequently, he was enlarged on bail on 14.11.2018. In the mean while, the petitioner filed a Habeas Corpus Petition in H.C.P.No.2546 of 2018 and the victim girl was produced before this Court. Her statement was recorded and she was sent to home, since she refused to go with her parents. Now the investigation is completed and the respondent police is about to file a charge sheet.

5. Heard, Mr. E.Kannadasan, learned counsel appearing for the petitioner, Mrs.M.Prabhavathi, learned Additional Public Prosecutor appearing for the first respondent police and Mrs.SP.Arthi, learned counsel appearing for the second respondent.

6. The case of the prosecution is that the minor girl aged about 17 years namely Thilaga was kidnapped by the second respondent/accused. Therefore, a case has been registered for the offences under Sections 363, 366, 342 of IPC r/w Section 12 of POCSO Act. Immediately, he was arrested

on 08.11.2018 and subsequently he was released on bail by an order dated 14.11.2018 by the learned Sessions Judge, Vellore, on the following conditions :-

"In the result, this petition is allowed and the petitioner is ordered to be released on bail, on his executing a bond for a sum of Rs.10,000/-, along with two sureties each for the like sum to the satisfaction of Judicial Magistrate No.V, Vellore. Further, he is being ordered to report every day (except Court holidays) at 10.30 a.m., before the Judicial Magistrate No.V, Vellore until further orders from the next day of release and on specific condition that he should co-operate for the medical test if necessitates and that he shall not tamper any witness, he should co-operate with the investigation, he should not make any undue influence on the witnesses and not to indulge in any other offence in the coming future."

Accordingly, the second respondent complaint all the conditions imposed by the learned Sessions Judge, Vellore. It is seen that the above said conditions relaxed thereafter.

7. It is also seen that the petitioner/defacto complainant filed a Habeas Corpus Petition before this Court in H.C.P.No.2546 of 2018 and the victim girl was produced before this Court. She categorically deposed that she

refused to go along with her parents. Therefore she was sent to Government Home for Gilrs, Murukkeri Village, Vellore District and even till date she is in the said home. It is also seen from the statement recorded from the victim girl under Section 161 of Cr.P.C., she categorically deposed that on her own wish, she went to the Mel Maruvathur Temple along with the second respondent and on receipt of the complaint and also her father and mother searching for her, she herself returned to her relatives home. She further deposed that the second respondent nothing to do with the allegation as alleged by the prosecution.

8. Considering the above facts and circumstance of the case and also the fact that there is no ground to cancel the bail already granted to the second respondent/accused, this Court is not inclined to cancel the bail in favour of the second respondent in Crl.M.P.No.859 of 2018 dated 08.11.2018.

9. Accordingly, this Criminal Original Petition is dismissed.

29.01.2019

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Index :Yes/No

To

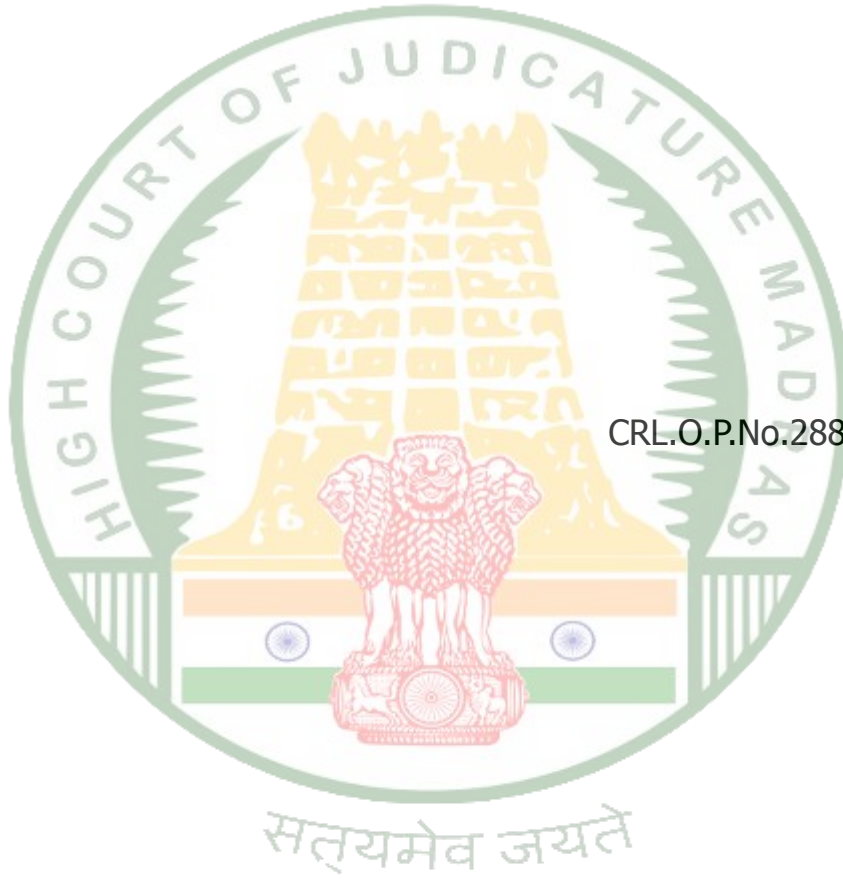
1. The Sessions Judge,
Magalir Neethi Mandram
(Fast Track Mahila Court) Vellore,
Vellore
2. The Judicial Magistrate No.V,
Vellore.
3. The Inspector of Police,
Pallikonda Police Station,
Vellore District.
4. The Public Prosecutor,
High Court of Madras,
Chennai.



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G.K.ILANTHIRAIYAN, J.

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