

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Nineteenth day of February Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice N. ANAND VENKATESH

CRIMINAL ORIGINAL PETITION No.30722 of 2018

[*]ANTONY PACKIA LOURDU RAJ
@ PAKIARAJ

[PETITIONER / ACCUSED]

Vs

THE STATE REP BY ITS,
THE INSPECTOR OF POLICE,
ORATHI POLICE STATION,
MADHURANTHAGAM TALUK,
KANCHEEPURAM DISTRICT
CR.NO.134 OF 2018.

[RESPONDENT]

For Petitioner : MR.V.PRAKASH SENIOR COUNSEL FOR
M/S.K.SUDALAI KANNU Advocate
[IN CRL.OP.NO.30722 OF 2018]

For Petitioner : M/S.K.SUDALAI KANNU Advocate
[IN CRL.MP.NO.5374 OF 2019]

For Respondent : M/S.M.PRABHAVATHI, ADDITIONAL PUBLIC PROSECUTOR

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner who apprehends arrest at the hands of the respondent police for the alleged offence under Sections [*]147, 427, 448, 294(b), 324, 325, 386, 506(2) of I.P.C., Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 and Section 12 of the Protection of Child from Sexual Offences Act, 2012 in Cr.No.134 of 2018 on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution is that this petitioner who was working as a Teacher in the School had attempted to physically abuse the victim girl who was studying in the same School.

3.The learned Senior Counsel Mr.V.Prakash appearing on behalf of the petitioner submitted that this is a clear case where the provisions of POCSO has been misused. The learned Senior Counsel submitted that this petitioner was one of the best Teachers in the Government School and he had also obtained an award for the same. The learned Senior Counsel submitted that the original complaint that was given on 16.08.2018 to the Superintendent of Police,

Kancheepuram, did not even contain the alleged incident. It is seen from the complaint that the incident was later added as an insertion at the end of the complaint. The learned Senior Counsel further submitted that the incident is said to have taken place on 23.07.2018. However, the Attendance Register maintained in the School clearly shows that the victim girl did not attend the School from 19.07.2018 to 23.07.2018. Therefore the learned Senior Counsel submitted that the very incident itself becomes questionable.

4.The learned Additional Public Prosecutor submitted that the victim girl has given a clear statement before the learned Magistrate under Section 164 of Cr.P.C. describing the entire incident. The learned Additional Public Prosecutor further submitted that the investigation has already been completed and the final report will be filed shortly.

5.Under normal circumstances, this Court would be hesitant to entertain a petition for anticipatory bail for offences registered under the POCSO Act. While considering the bail petition, this Court has to normally go by the statement made by the victim. In all these cases, the victim is taken to the concerned Magistrate Court for the purpose of recording the statement under Section 164 of Cr.P.C. This Court is also aware of the strong presumption that has been raised under Sections 29 and 30 of the POCSO Act which has to be necessarily rebutted by the accused person.

6.However, this is one of the rare cases where this Court finds some prima facie materials, which creates a doubt in the mind of this Court with regard to the alleged incident itself. The incident is said to have taken place on 23.07.2018. The complaint that was given to the Superintendent of Police on 16.08.2018 does not even mention about this incident in the body of the complaint and it is seen that this incident has been inserted at the end of the complaint. The Attendance Register maintained by the Government School is also one of the important documents which has to be taken into consideration. Copy of the Attendance Register that is maintained in the School has been produced before this Court. The Attendance Register shows that the victim had not gone to the School from 19.07.2018 to 23.07.2018. That being so, the very incident which is said to have taken place on 23.07.2018, becomes highly questionable. The respondent Police ought to have started their investigation with this Attendance Register and proceeded further in this case. There is also material to show that there is a previous dispute between the mother of the victim and the Teacher.

7.Taking into consideration the facts and circumstances of the case and also the reasons stated hereinabove and also the fact that the investigation is almost completed and final report is going to be filed very shortly, this Court is inclined to grant anticipatory bail to this petitioner.

8. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the Judicial Magistrate Court, Madhuranthagam, Kancheepuram District, on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only), with two sureties each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that:

(a) the petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the Court concerned may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(b) the petitioner shall report before the respondent police daily at 5.30 p.m. until further orders;

(c) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(d) the petitioner shall not abscond either during investigation or trial;

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

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

-sd/-

19/02/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

[*] Amended and a period of ten days time, from the date of receipt of a copy of this order, is granted to comply with the condition imposed by this Court. It is made clear, no further extension of time granted by this Court, as per order of this Court dated 16/04/2019 made in CRL.MP.NO.5374 OF 2019 IN CRL.OP.NO.30722 OF 2018

TO

1 THE JUDICIAL MAGISTRATE,
MADURANTHAGAM, KANCHEEPURAM DISTRICT.

2 THE CHIEF JUDICIAL MAGISTRATE
CHENGALPET [FOR INFORMATION]

3 THE INSPECTOR OF POLICE,
ORATHI POLICE STATION,
MADHURANTHAGAM TALUK,
KANCHEEPURAM DISTRICT

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

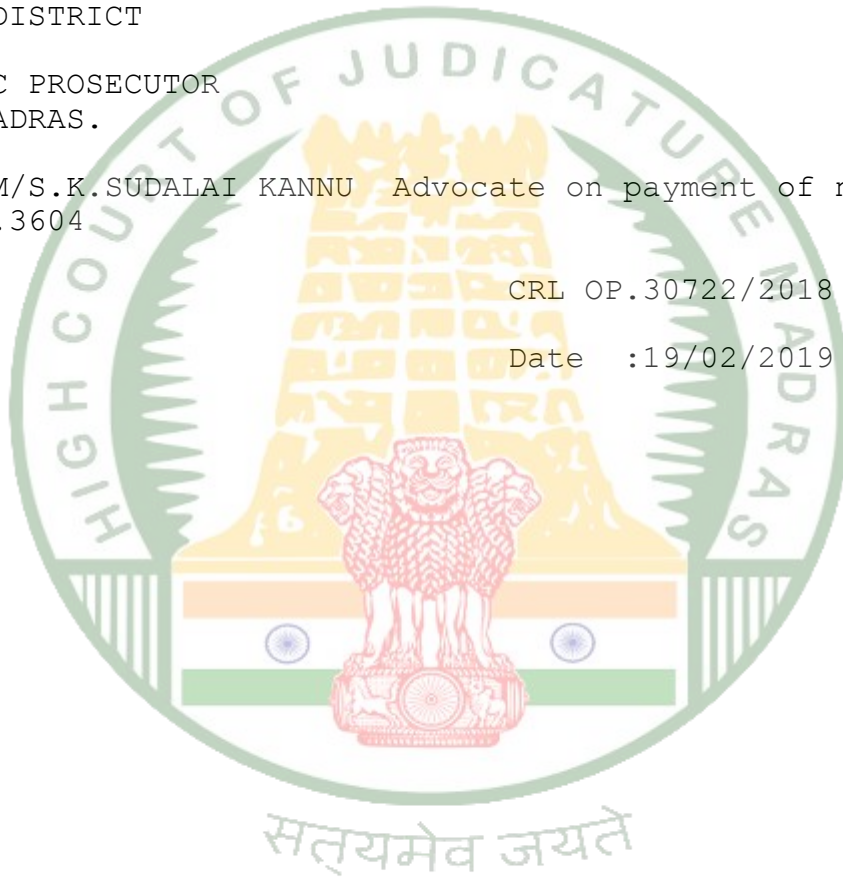
+1CC to M/S.K.SUDALAI KANNU Advocate on payment of necessary
charges SR NO.3604

CRL OP.30722/2018

Date :19/02/2019

MK:21/02/2019

MK:22/04/2019



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