



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 26/08/2019

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PRESENT

The Hon`ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD). No.11436 of 2019

Kubendran,
S/o. Murugan,
Maravettai,
Thevaram,
Uthamapalayam Taluk,
Theni District.

... Petitioner/Sole Accused

Vs

The Sub Inspector of Police,
Devaram Police Station,
Theni District,
Cr No. 239 of 2019.

... Respondent/Complainant

For Petitioner : M/s. R. Suriya Narayanan,
Advocate.

For Respondent : Mr.V.Neelakandan,
Additional Public Prosecutor

PETITION FOR BAIL Under Sec.439 of Cr.P.C

PRAYER :-

For bail in Crime No. 239 of 2019 on the file of the
respondent police

ORDER : The Court Made the following order :-

The petition has been filed by Sole Accused seeking bail for
the alleged offence punishable under Section 4 of Protection of
Child from Sexual Offence Act 2012 and 506 (ii) of IPC, in Crime

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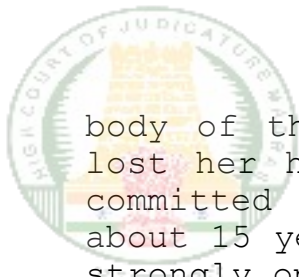


No.239 of 2019.

2. Heard both sides.

3. The learned counsel appearing for the petitioner has submitted that already the petitioner's grand mother Tmt.Mookkammal entered into a sale agreement in respect of the property belongs to the victim girl's father namely Ananthan. He further submitted that since the said Ananthan did not come forward to execute the sale deed, in pursuance of the above said agreement, an oral agreement has been entered into to treat the aforesaid transaction is a loan transaction and subsequently, the said Ananthan has not settled the said loan also. He further submitted that since the petitioner's grand-mother has insisted the said Ananthan to repay the said loan amount, the defacto complainant gave a false complaint stating that the petitioner forcibly had a sexual intercourse with her 15 years old daughter. He further submitted that in the FIR, it is stated that on 07.07.2019 at 11.00 p.m, the victim girl's brother namely Alex also was sleeping in the said house and as such, if the petitioner had made any threat to the victim girl, her brother would have awoken and noticed that. He further submitted that even though the occurrence was said to have been taken place on 07.07.2019, the complaint was lodged only on 09.07.2019. He further submitted that the Doctor's Certificate will show that there was no external injuries on the private part of the victim girl. He further submitted that the statement, which was recorded under Section 164 Cr.P.C from the victim girl also would show that she gave the said statement as per the instructions issued by her mother (defacto complainant), because, the same version is mentioned in both the complaint as well as the 164 statement. He further submitted that the victim girl's father also handed over the original sale deed and that also would show that the aforesaid transaction has been converted into a money transaction and since the petitioner's grand mother insisted to repay the debt, with a view to defraud the petitioner's grand-mother, the victim girl's mother has lodged a false complaint. Based on the said complaint, the petitioner was arrested and remanded to judicial custody on 09.07.2019 and by this time, the investigation might have been completed. Hence, he prayed to grant bail to the petitioner.

4. Per contra, the learned Additional Public Prosecutor appearing for the respondent has submitted that sale agreement between the petitioner's grand-mother and the victim girl's father is in no way connected with the aforesaid crime. He further submitted that in the FIR itself, it is clearly stated that on 07.07.2019, at about 11.00 p.m, when the victim girl was in her house along with her brother, who was sleeping, after taking tablets, he would not have noticed the entry made by the petitioner in the house. He further submitted that in the Doctor's Certificate, it is clearly stated that Doctor has noticed injuries all over the



body of the victim girl and also stated that the victim girl had lost her hymen and therefore, it is clear that the petitioner has committed rape. He further submitted that the victim girl is aged about 15 years and investigation is not yet completed, and hence, he strongly opposed this petition.

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5. Even though the learned counsel for the petitioner has submitted that on 21.11.2013, the petitioner's grand-mother Mookammal has entered into a sale agreement with the victim girl's father Ananthan and that since the said Ananthan did not come forward to execute the sale deed, the parties orally agreed to convert the said transaction as money transaction, and that since the petitioner's grand mother demanded to repay the said amount, the present complaint has been falsely lodged against the petitioner, those facts were not mentioned in the petition. Further, a perusal of the agreement shows that the said agreement was entered between one Mookammal and the victim girl's father Ananthan on 21.11.2013 and in the said sale agreement, it is stated that the sale has to be completed on or before 20.05.2014. But, so far the said Mookammal has not taken any steps for getting the sale deed executed. Further, the Doctor's Certificate would show that the victim girl had injuries all over her body and the same would show that she was subjugated to sexual intercourse. Further, the victim girl had categorically stated in her statement, which was recorded 164 Cr.P.C that the petitioner has forcibly had a sexual intercourse with her.

6. Taking into consideration of all the aforesaid facts, this Court is of the view that the petitioner has not made out a case for getting bail. Hence, this petition is dismissed.

sd/-
26/08/2019

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE SESSIONS JUDGE/MAHILA FAST TRACK COURT,
THENI.
2. THE SUB INSPECTOR OF POLICE,
DEVARAM POLICE STATION,
THENI DISTRICT,
3. THE SUPERINDENT CENTRAL PRISON,
MADURAI.

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4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

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ORDER
IN
CRL OP(MD) No.11436 of 2019
Date : 26/08/2019

TR/PN/SAR- (05.09.2019) 4P 5C