



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 20/12/2019

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PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

CRL OP(MD). No.19371 of 2019

Yasir

... Petitioner/Sole Accused

Vs

State Rep.by
The Inspector of Police,
All Women Police Station,
Colachel,
Kanyakumari District.
Crime No.23 of 2019

... Respondent/Complainant

For Petitioner : Mr.Ajmal Khan
For M/s. Ajmal Associates,
For Respondent : Mr.A.Robinson,
Government Advocate (Crl.Side)

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

PRAYER :-

For Anticipatory Bail in Crime No.23 of 2019 on the file of the respondent police.

ORDER : The Court made the following order :-

Heard the learned counsel appearing for the petitioner and the learned Government Advocate(Crl. Side) appearing for the respondent.

2. The petitioner apprehending arrest at the hands of the respondent police for the offences under sections 9(m) and 10 of the Protection of Children from Sexual Offences Act, in Crime No.23 of 2019, on the file of the respondent police, seeks anticipatory bail.

3. The learned Government Advocate (Crl. Side) points out that the petitioner's earlier petitions for anticipatory bail were dismissed and that there is absolutely no change in circumstances.

4. The case of the defacto complainant is that the daughter of the defacto complainant aged 9 years was sent for buying eggs from the local grocery shop. It is alleged that while returning from the



grocery shop, the petitioner herein called the victim girl and attempted to misbehave with her by attempting to untie her pant.

5. The occurrence had taken place on 10.06.2019. The complaint was lodged on 11.06.2019.

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6. The learned senior counsel appearing for the petitioner submitted that there is some dispute between the petitioner's family and that of the defacto complainant and that there was a mediation and enquiry by the local jamath some two days prior to the occurrence and that the complaint itself is malafide in nature.

7. He would also point that even if the entire prosecution case is taken at its face value, still the offences under Section 9(m) and 10 of will not be attracted. Section 9(m) of the Act can be invoked only if the victim had been subjected to sexual assault. The expression sexual assault has been defined in Section 7 of the Act as follows:-

"7. Sexual Assault,- Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other Act with sexual intent which involves physical contact without penetration is said to commit sexual assault."

8. In this case none of the ingredients are present. Likewise, Section 10 of the Act will not be attracted because it pertains to aggravated sexual assault. However, the offence under Section 11 r/w. 12 is attracted. The act alleged to have been committed by the petitioner, if through will amount to sexual harassment committed upon a child.

9. Section 12 of the Act lays down the punishment for sexual harassment. Whoever commits sexual harassment upon a child shall be punished with imprisonment for a term which may extend to three years and shall also liable to fine. Now the question arises as to whether this is bailable offence or not. The learned senior counsel drew my attention to Schedule II of Cr.P.C. It states that if the offence is punishable with imprisonment for less than three years, then it would be non-cognizable and bailable. But Section 12 of the Act describes punishment for a period upto three years. Therefore, I am of the view that Section 12 of POSCO Act is a non-bailable offence. Hence, this criminal original petition for anticipatory bail is maintainable.

10. The petitioner is a college going student. He is aged around 19 years. I am of the view that arrest of the petitioner is not warranted. However, till the case is concluded, the petitioner will have to necessarily keep away from the child. The learned



senior counsel on instructions gives an undertaking that the petitioner would conduct himself in such a way that he does not come in contact with the child in question.

11. Recording the said undertaking, I am inclined to grant anticipatory bail to the petitioner with certain conditions. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance before the learned Judicial Magistrate Mahila Court, Kanyakumari District, and on his executing 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 Court concerned and on further condition that the petitioner shall appear before the respondent police as and when required for interrogation. The petitioner shall comply with the conditions stipulated under Section 438 Cr.P.C scrupulously.

12. The petitioner shall appear before the concerned Court within a period of 15 days from the date on which the order copy made ready, failing which, the petition for anticipatory bail shall stand dismissed.

sd/-
20/12/2019

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

TO

1. THE JUDICIAL MAGISTRATE, MAHILA COURT,
KANYAKUMARI DISTRICT.
2. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
KANYAKUMARI DISTRICT AT NAGERCOIL.
3. THE INSPECTOR OF POLICE, ALL WOMEN POLICE STATION,
COLACHEL, KANYAKUMARI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-22449[I] dated 20/12/2019)

ORDER
IN
CRL OP(MD) No.19371 of 2019
Date :20/12/2019

MS/PN/SAR-2/03.01.2020/3P.6C