

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.05.2020

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THE HONOURABLE MR. JUSTICE **M. NIRMAL KUMAR**

Crl.O.P.No.7497 of 2020

A.Ebinasar

... Petitioner

Vs.

State rep. by
The Inspector of Police,
W-4, All Women Police Station,
Kilpauk, Chennai.
(Crime.No.6/2020)

... Respondent

Prayer: Criminal Original Petition filed under Section 439 Cr.P.C. to enlarge the Petitioner on bail in the Crime No.6 of 2020 on the file of the Respondent police.

For Petitioner : Mr.S.Kartik

For Respondent : Mr.S.Karthikeyan,
Additional Public Prosecutor

ORDER

The petitioner, who was arrested and remanded to judicial custody on 17.03.2020 for the offence punishable under Section 8 of the POCSO Act in Crime No.6 of 2020 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that, on 15.03.2020, about 10.00 p.m, the defacto complainant's third child i.e. victim girl came out of her house to attend nature's call and at that time, the accused, who is also residing in the same area, had called the victim, kissed her and pressed her chest and thus, the accused has committed sexual assault on the minor girl.

3. The contention of the petitioner is that the petitioner is the neighbour of the defacto complainant and there was some dispute between the defacto complainant and the petitioner and they are residing in the same area for quite some time. The petitioner is a carpenter by profession and he has not indulged in any such activity as alleged. Due to prior enmity, a false complaint has been lodged against the petitioner.

4. The learned Additional Public Prosecutor submitted that the petitioner, who is a carpenter, is the neighbour of the defacto complainant and they used to share common toilet. One such day, when the victim came out to attend nature's call, about 10.00 p.m taking advantage of her loneliness, the petitioner has sexually assaulted the victim. Thereafter, on enquiry, the petitioner was arrested.

5. The learned Additional Public Prosecutor further submitted that in this case, the report for recording of 164 Cr.P.C statement was given by the respondent to the learned VI Metropolitan Magistrate on 20.03.2020 and the statement is yet to be recorded. He objected for grant of bail to the petitioner.

6. In this case, the petitioner was arrested 17.03.2020 and has been in judicial custody for the past 74 days. Further, the petitioner had sexual intention and touched the private parts of the victim, and other than the family members of the victim, there are no local witnesses against the petitioner. It is admitted that the petitioner is residing in the same area for a long period.

7. Considering the submissions of the learned Additional Public Prosecutor that 164 Cr.P.C statement is yet to be recorded, this Court restrains the petitioner to stay at his house viz., No.20, Dasapuram, Chepet, Chennai till 164 Cr.P.C statement is recorded.

8. In view of the above and taking into account the period of incarceration and also the fact that the petitioner is a carpenter and is the neighbour of the defacto complainant and other than the family members of the victim, locality witnesses have not certainly pointed against the petitioner, this

Court is inclined to grant bail to the petitioner, subject to the following conditions :-

(a) the petitioner shall execute his own bond for a sum of Rs.10,000/- (Rupees Ten thousand only) before the Superintendent of the concerned prison;

(b) thereafter, the petitioner shall execute two sureties for a sum of Rs.10,000/-(Rupees ten thousand only) each, before the concerned Magistrate on or before 01.07.2020, failing which the bail granted by this Court shall stand dismissed.

(c) considering the apprehension of the learned Additional Public Prosecutor, the petitioner is restrained from entering into his house at Dasapuram, Chetpet till 164 Cr.P.C. statement is recorded. However, he is permitted to stay at No.77, Sudalai Pattan Mandabam Salai, Kotturpuram, Chennai – 600 085, where, one Rajendiran, his son-in-law is residing.

(d) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

(e) the petitioner shall report before the respondent police as and when required for interrogation.

(f) the petitioner shall not abscond either during investigation or trial.

(g) the petitioner shall not tamper with evidence or witness either during investigation or trial.

(h) 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]**.

(i) If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

29.05.2020

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Index : Yes/No

Internet : Yes/No

Speaking order/Non-speaking order



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M.NIRMAL KUMAR, J.

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To

1. The Inspector of Police,
W-4, All Women Police Station,
Kilpauk, Chennai.
2. The Public Prosecutor,
High Court, Madras.



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