

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.05.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No. 7808 of 2020

Lena Thamizhavanan

... Petitioner

Vs.

State rep.by

... Respondent

The Inspector of Police,
W-20, Saidapet All Women Police Station,
Chennai -600 015.
Crime No.143 of 2020.

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C., praying, to enlarge the petitioner on Bail in Crime No.143 of 2020 on the file of the respondent police.

For Petitioner : Mr.A.Nagarajan

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

ORDER

The petitioner, who is an accused in Crime No.143 of 2020 for the offences punishable under Section 363 of IPC and Section 6 of POSCO Act, the petitioner was arrested and remanded to judicial custody on 08.04.2020, hence, he seeks bail.

2. The case of the prosecution is that the father of the victim girl lodged a complaint before the Inspector of Police, R-6 Kumaran Nagar Police Station, on 21.03.2020, for girl missing. Thereafter, on 08.04.2020, the said accused and the girl returned back to their house and the case was transferred to respondent police and altered to offence under Section 363 of IPC and 6 of POSCO Act.

3. The Learned Counsel for the Petitioner would submit that the younger daughter of the informant had contact with a person who was having a saloon shop near his house. The defacto complainant's mother insisted her daughter not to talk to him but she continued to talk with him. On 21.03.2020, about 01.00 P.M, the informant daughter left their house in her bicycle stating that she is going to her elder sister's house but she did not return back. Thereafter, a complaint came to be lodged. On 08.04.2020, the accused and the

victim girl were caught and secured. Further, the contention of the petitioner is that the petitioner and victim girl were having love affair with each other. The parents of the victim girl forcibly keeping her in her house and was making arrangements for her marriage with an elderly person, against the wish of the victim girl. The victim girl, thereafter, came to the petitioner and forced him to join her, otherwise she would commit suicide. The petitioner had no other choice, hence he had gone along with the victim girl and on her compulsion Thali was tied and marriage was performed in a Temple. Thereafter, they lived together. On 08.04.2020, the respondent police had arrested him, at that time also, the victim had clearly stated that she only forced the petitioner to take her and the petitioner is not at fault. The victim being a minor, the petitioner made as an accused in the above case.

4. The Learned Additional Public Prosecutor for the respondent would submit that the victim's father initially gave a complaint for girl missing. The victim, on compulsion of the petitioner, had joined him and both of them had eloped tied Thali on their own. On the pretext of marriage, the petitioner had physical relationship with victim and they were living husband and wife. Thereafter, with great difficulty, the respondent police has secured the victim, arrested the accused. Further, he submitted that the victim girl has given 164 Cr.P.C statement and produced the same.

5. Considering the submissions and perusal of the material and the statement of the victim, it is seen that the petitioner and victim girl had love affair between them. On 21.03.2020, the victim girl has stated to her parents that she is to visit her sister's house and thereafter, she met the petitioner and had gone along with him in his bike and before a closed temple tied a yellow rope and the petitioner taken her to a house. There, they were living together for 17 days. The petitioner used to bring food to her and he was working in nearby shop and they were living together. On one occasion, the petitioner had physical relationship with the victim. The victim admits that for 17 days both lived together and from the statement, it is seen that the victim was knowingly on her own accord, staying with the petitioner and she was not under compulsion. Further, in view of the above facts and considering the period of incarceration, 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 in which the petitioner has been confined on his release;

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

(c) 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;

(d) the petitioner shall not commit any offences of similar nature;

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

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

(g) the petitioner shall report before the respondent Police as and when required for interrogation.

(i) 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]**.

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

6. With the above directions, this Criminal Original Petition is ordered.

-sd/-

28/05/2020

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

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सत्यमेव जयते

Sub-Assistant Registrar (Statistics/C.S.)

High Court, Madras - 600 104.

WEB COPY

TO

1 THE SPECIAL COURT, POCSO ACT,
CHENNAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE
W-20 SAIDAPET ALL WOMEN POLICE STATION
CHENNAI 600 015.

CC to M/S.A.NAGARAJAN Advocate on payment of necessary charges

CRL OP.7808/2020

Date :28/05/2020

TA-21/08/2020



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