

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2020

CORAM:

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

CRL.O.P.No.8514 of 2020

Thavamani, M/46 years,
S/o.Ganesan,
No.591, 5th Block,
Poondithangammal Street,
Tondiarpet, Chennai-600 081. ... Petitioner/Accused

Vs.

The State represented by
The Inspector of Police,
W-15, All Women Police Station,
Royapuram, Chennai-600 013.
(Crime No.8 of 2019) .. Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 439 of Cr.P.C.,
praying to enlarge the petitioner/accused on bail and release him from the
custody in Crime No.8 of 2019 pending on the file of the respondent
police.

For Petitioner : Mr.P.Paul Selvam

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

ORDER

The petitioner, who was arrested and remanded to judicial custody on 13.08.2019 for the offences punishable under Section 10 of POCSO and altered to Section 6 of POCSO Act of 2012 and Section 376(AB) of Indian Penal Code, in Crime No.8 of 2019 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 13.08.2019, the defacto complainant who is the mother of the victim girl had given a complaint stating that her husband's maternal uncle who is having a share in the house where defacto complainant and her family are residing, due to which the petitioner used to come often to their house. On 13.08.2019, the accused who is a fisher man had come back from his work and was sleeping in the defacto complainant's house. The defacto complainant along with her husband and the infant daughter had gone to their sister's house which is next door. On the same day at about 01.00 p.m, defacto complainant's daughter who is one and half year old child had gone to

their house to fetch her toys, since the child did not return, the defacto complainant went to her house, where she saw the petitioner was touching the private part of the infant baby. The defacto complainant started shouting and raised alarm on seeing the incident, the petitioner ran away from the house. Hence, the complaint.

3.The learned counsel for the petitioner would submit that there is a dispute between the defacto complainant and the petitioner with regard to the property situated Door No.591, V-Block, Poondithangammal Street, New Washermenpet. The petitioner is the maternal uncle of the defacto complainant's husband and due to dispute over the property the petitioner is falsely implicated in this case. It is highly improbable for a one and half year old child to come alone to the house in search of her toy and at that time, the petitioner is said to have committed the said act. Further, the Doctor evidence is in favour of the petitioner, the complaint is highly motivated, to keep away and eliminate the petitioner from the property, the defacto complainant for that reason has given false

complaint. Further, it could be seen that the place of occurrence is the house of the defacto complainant. He further submitted that the petitioner was detained under Goondas Act and the detention order was quashed by this Court in H.C.P.No.2371 of 2019 on 28.05.2020. Hence, he sought for bail.

4.The learned Additional Public Prosecutor submitted that it is to be seen that one and half year child was sexually abused by the petitioner which is an inhuman act which would show the perversity of the petitioner. Further, in this case, the P.W.1 and P.W.2 have been already examined and Exs.P1 to P4 were marked. The case is pending trial and only few more witnesses are to be examined. At this stage, if the petitioner is released on bail he would abscond and he strongly opposed for grant of bail to the petitioner.

5.Considering the submissions and on perusal of the materials and the allegations made against the petitioner, it is seen that there is a

dispute with regard to the property where both the petitioner as well as the defacto complainant's family have claim and right. Further considering the detention order against the petitioner quashed, 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) each, before the concerned Magistrate within a period of 15 days from the date of lifting of lockdown and commencement of regular functioning of Court below, 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 report before the respondent police as and when required for interrogation;

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

(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.

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

सत्यमेव जयते

11.06.2020

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Index : Yes / No
Internet : Yes/ No

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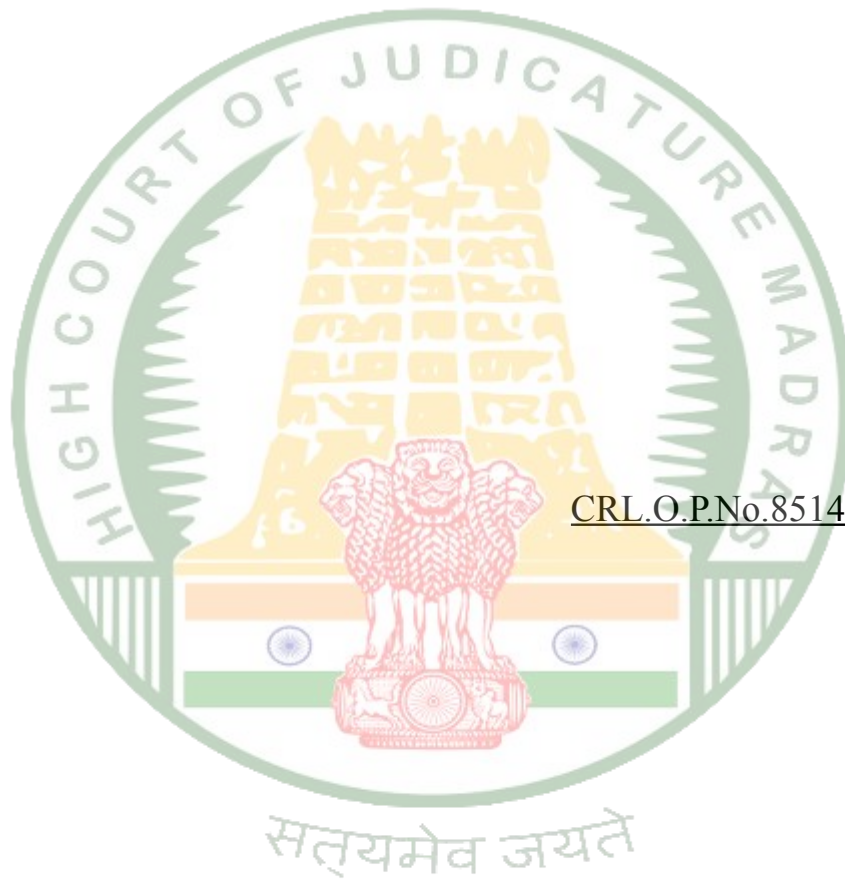
- 1.The Inspector of Police,
W-15, All Women Police Station,
Royapuram, Chennai-600 013.
- 2.The Special Court for Exclusive Trail of Cases Under POCSO Act,
Chennai.
- 3.The Superintendent,
The Central Prison,
Puzhal, Chennai.
4. The Public Prosecutor, High Court, Madras.



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M.NIRMAL KUMAR, J.,

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