

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2020

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.8691 of 2020

R.Shivakumar

... Petitioner

/Vs/

State rep by
Inspector of Police,
All Women Police Station-Madipakkam,
Chennai.
(Crime No.8 of 2020)

... Respondent

Prayer: Criminal Original Petition filed under section 439 of Cr.P.C., to enlarge the Petitioner on Bail, concerned in Crime No.8 of 2020, on the file of the Respondent Police.

For Petitioner : Mr.T.K.S.Gandhi

For Respondent : Mr.C.Iyyappa Raj
Additional Public Prosecutor

* * * * *

ORDER

The petitioner was arrested and remanded to judicial custody on 21.05.2020 for the offence punishable under Section 11(i) and 12 of the POCSO Act, 2012 in Crime No.8 of 2020 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the defacto complainant one Sargunam father of the victim girl lodged a complaint on 21.05.2020 stating that on 18.05.2020 the defacto complainant had sent his children to play at the terrace that the children had came back to their home. The daughter informed her mother that the petitioner had exhibited his private part to his daughter and hence the complaint came to be lodged.

3. The learned counsel for the petitioner submits that the petitioner and the defacto complainant are living in a flat comprising of 4 flats, 2 flats in the Ground Floor and 2 flats in the First Floor. Both the petitioner and the defacto complainant are residing in the First Floor. The lock down of Covid-19, the petitioner as well as the defacto

complainant are unable to move any where and during the evening hours they used to spend time in the terrace. On 21.05.2020, the petitioner was not at home, at that time there was a quarrel between the petitioner's son and the defacto complainant family and there was heated exchange of words. Thereafter, the petitioner's son called the service of emergency police 100 at 08.30 a.m., and the police had come to the flat and thereafter pacify and dispeld the quarrel between them. In view of taking revenge, the petitioner had lodged a false complaint at about 10.30 a.m., on 21.05.2020 for the occurrence which is said to have taken place on 18.05.2020.

4. The petitioner further submits that he is a Hindu priest and he is a god fearing person, due to petitioner's incarceration he and his family put to untold misery and sufferings. Further due to the lock down, the petitioner could not meet even his family members and the petitioner is now in solitariness. The learned counsel for the petitioner further submits that the petitioner has been falsely implicated, due to the above case the entire family has been put to shame. Now the petitioner's family had shifted their residence and presently residing at No.53/2,

Periyakulathuvancheri Main Road, Kamatchi Amman Nagar, Iyyappanthangal, Chennai – 112. The petitioner's family had moved away from the flat of Kanagu Raghu Apartments, Krishna Nagar, Ullagaram, Chennai and now his family is staying at No.53/2, Periyakulathuvancheri Main Road, Kamatchi Amman Nagar, Iyyappanthangal, Chennai – 112.

5. The learned Additional Public Prosecutor submitted that the petitioner had elderly person taking advantage of the loneliness of the minor victim girl who is aged about 10 years had exhibited his private part with the criminal intent and thereby committed the offence which was immediately informed by the victim girl to her parents. The parents were unable to come to terms and they were not aware what to be done and thereafter thinking over the issue after deliberation and fearing that the petitioner is residing in the opposite flat such incidents would continue further. A complaint was lodged on 21.05.2020 and that is the reason for the delay. Further as stated by the petitioner, there was no quarrel on 21.05.2020 at 08.30 am., and no police was informed to call for emerging '100' service was made. Further the victims family still

unable to come to terms had left to their native and due to the lock down they are unable to reach back to Chennai to record the statement of the victim girl and opposed the bail application.

6. Taking into consideration the nature of allegations against the petitioner in the FIR and also taking note of the fact that the petitioner was in judicial custody from 21.05.2020 and further the family of the petitioner had shifted their residence to Kamatchi Amman Nagar, Iyyappanthangal, Chennai-600 112, 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 their 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 Judicial 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.

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

17.06.2020

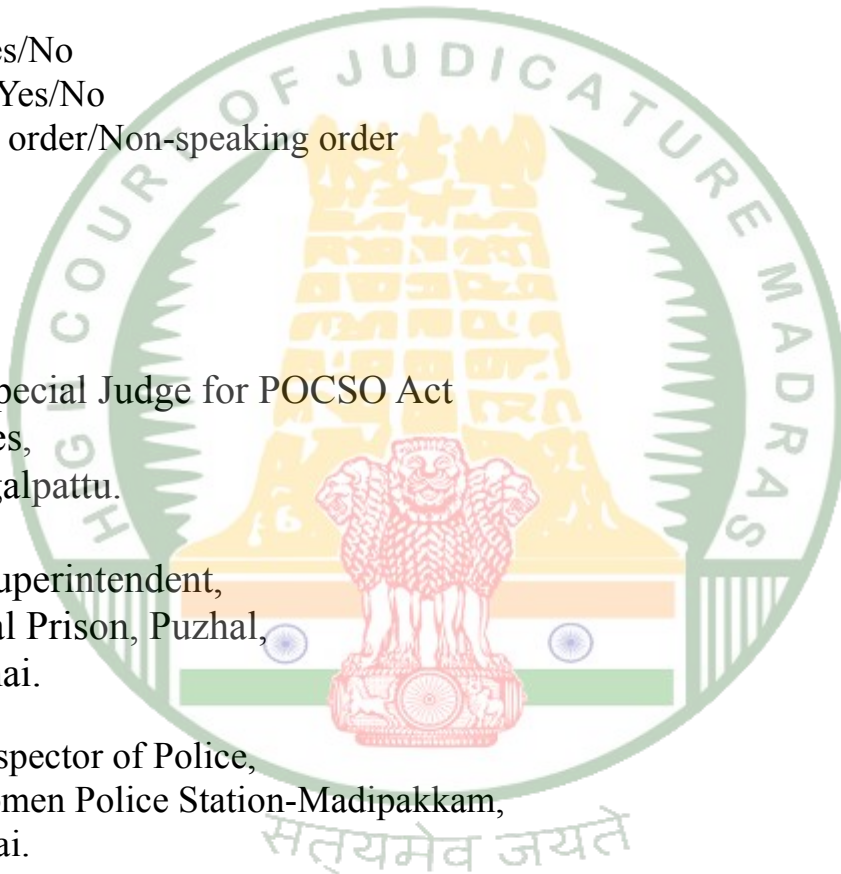
Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order
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To

1. The Special Judge for POCSO Act cases,
Chengalpattu.
2. The Superintendent,
Central Prison, Puzhal,
Chennai.
3. The Inspector of Police,
All Women Police Station-Madipakkam,
Chennai.
4. The Public Prosecutor,
High Court of Madras.

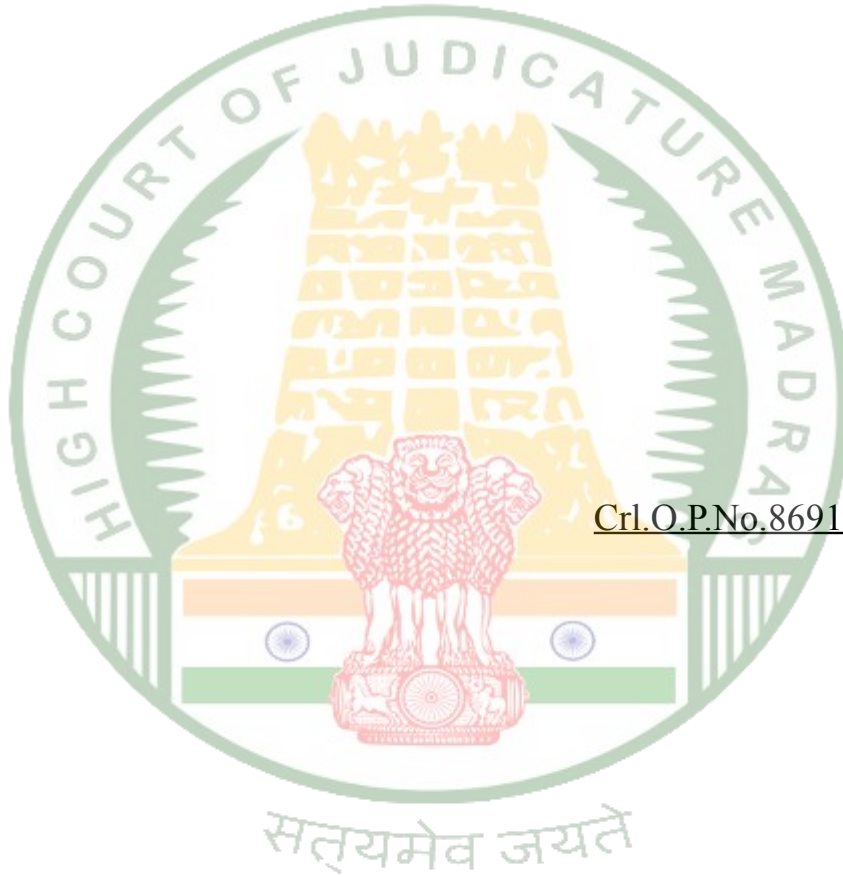


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M.NIRMAL KUMAR,J.

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