

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.9608 of 2020

1.Jayakumar
2.Rangaraj @ Ranga
3.Jebaraj

.. Petitioners/Accused

/versus/

1.State rep.by
Inspector of Police,
Udhagamandalam Railway Police Station,
Coimbatore District.
(Cr.No.1/2020).

2.State Rep.by
Inspector of Police,
Mettupalayam Railway Police Station,
Coimbatore District.
(Cr.No.3/2020)

3.State Rep.by
CBCID, Anti Trafficking Cell,
Old Commissionerate,
Chennai,
(ATC Cr.No.3/2020)

.. Respondents/Respondents/
Complainant

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C., praying to enlarge the petitioners on bail in Crime No.3 of 2020 pending on the file of the Inspector of Police, CBCID ATC, Chennai.

For Petitioners : Mr.T.K.Sathia Seelan

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

O R D E R

The petitioner, who were arrested and remanded to judicial custody on 10.02.2020 for the offence punishable under Sections 5 (g), 5(1) 5(j)(ii) r/w 6 of POSCO Act and 376 (D)(A) of IPC thereafter alter the Section 5(1) 5(j)(ii) r/w 6 of POSCO Act and 370 of IPC, Immoral Prevention Act Section 3(1), 4(1) in Crime No.3 of 2020 on the file of the respondent police, seek bail.

2. The case of the prosecution is that one year prior to Vinayagar Sadhurthi the victim had left her grandfather's house from Chennai to Ooty by Nilagiris express and she got down at the last station by 6 a.m.. While she was alone near a car parking under a big tree, three persons, who passed came to the victim girl and forcible taken her and sexually assaulted her. When the victim gained conscious, she felt severe pain on her private part and low abdomen and one of the police men there had helped her by giving some money and she reached back her home at Chennai. After sometime, she became pregnant and when she was taken to Government Hospital, the Hospital Authorities informed the police, who recorded her statement and thereafter, the case came to be filed. Initially, the first respondent registered the case in Crime No.1 of 2020 and thereafter, on the point of jurisdiction, the case was transferred to the 2nd respondent, which was taken in crime No.3 of 2020. Thereafter, on the orders of the Director General of Police, the case was transferred to the 3rd respondent namely, CBCID (Anti Trafficking Cell), Chennai in ATC Crime No.3 of 2020, now the third respondent is presently investigating the offence from 13.05.2020, immediately after, the third respondent took up the investigation, identification parade was held and some of the accused have been secured.

3. The contention of the the petitioners is that the petitioners name do not find place in the FIR and they have been falsely implicated in this case, only on the confession of the co-accused with whom they had some issues and the co accused is a lady, who is of doubtful integrity and for obvious reasons, she has implicated the petitioners. Further, the learned counsel submitted that they have been arrested in this case on 10.02.2020 and the investigation in this case is yet to be completed and charge sheet is to be filed, hence, they are entitled for statutory bail. He further submitted that by order dated 30.06.2020, this Court has granted bail to the co-accused in Crl.O.P.No.8934 of 2020 and the same benefit to ensue to the petitioners.

4. The learned Additional Public Prosecutor would submit that initially the case was registered by the first respondent and thereafter, it was transferred to the 2nd respondent on the point of jurisdiction and on the orders of the Director General of Police, the case was transferred to the third respondent, CBCID (Anti Trafficking Cell), Chennai on 13.05.2020. In this case, the minor girl has been ravished by the petitioners and others. A thorough investigation is in progress and several accused have been arrested in this case. Investigation is at crucial stage. Since the case was recently transferred on 13.05.2020 to the third respondent, the investigation could not be completed and the same is pending.

5. The Hon'ble Supreme Court in Crl.A.No.452 of 2020 dated 19.06.2020 in the case of S.Kasi V. State through the Inspector of Police, Samayanallur Police Station, Madurai District while referring to the earlier decisions regarding default bail, has held hereunder.

"14. The scheme of Code of Criminal Procedure as noticed above clearly delineates that provisions of Section 167 of Code of Criminal Procedure gives due regard to the personal liberty of a person. Without submission of charge sheet within 60 days or 90 days as may be applicable, an accused cannot be detained by the police. The provision gives due recognition to the personal liberty".

6. The petitioner's were arrested on 12.02.2020 and they are in incarceration for more than 143 days. The respondent/police have not filed final report till date. Though the allegations are very serious in nature, the petitioners are entitled to default bail as per the mandate of Section 167(2) Cr.PC, since the final report has not been filed till date.

7. In view of the above, the petitioners are entitled to bail as per the mandate under Section 167(2) of Cr.P.C and thereby this Court is inclined to grant bail to the petitioner, subject to the following conditions:

8. Considering the rival submissions and on perusal of the materials, this Court is inclined to grant bail to the petitioners, subject to the following conditions :

(a) the petitioners are ordered to be released on bail on executing their own bond for a sum of Rs.10,000/- (Rupees ten thousand only) each, before the Superintendent of the concerned prison in which the petitioners have been confined on their release;

(b) the petitioners 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 petitioners shall report before the third respondent police daily at 10.30 a.m, until further orders.

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

(f) the petitioners shall not abscond either during investigation or trial;

(g) the petitioners 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 petitioners in accordance with law as if the conditions have been imposed and the petitioners 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.

-sd/-

03/07/2020

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

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SESSIONS JUDGE, SPECIAL
COURT FOR EXCLUSIVE TRIAL OF CASES UNDER
POCSO ACT, CHENGALPATTU

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

4 INSPECTOR OF POLICE,
UDHAGAMANDALAM RAILWAY POLICE STATION,
COIMBATORE DISTRICT.

5 INSPECTOR OF POLICE,
METTUPALAYAM RAILWAY POLICE STATION,
COIMBATORE DISTRICT.

6 CBCID, ANTI TRAFFICKING CELL,
OLD COMMISSIONERATE, CHENNAI.

CC to M/S.T.K.SATHIA SEELAN Advocate on payment of necessary charges

CRL OP.9608/2020

Date :03/07/2020

RVR 28/08/2020

<https://hcservices.ecourts.gov.in/hcservices/>