

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2020

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Cr1.O.P.No.9679 of 2020

Mathankumar

.. Petitioner

Vs.

State Rep. By

... Respondent

The Inspector of Police,
All Women Police Station
Perur, Coimbatore.
(Crime No.4/2020)

Prayer: Criminal Original Petition filed under Section 439 of Criminal Procedure Code, praying to enlarge the petitioner on bail pending investigation in Crime No.4 of 2020 on the file of the respondent police.

For Petitioners : Mr.G.R.Deepak

For Respondent : Mr.K.Prabakar, APP

O R D E R

(The case has been heard through video conference)

The petitioner, who was arrested and remanded to judicial custody on 28.05.2020 for the alleged offences under Sections 5(1) 5(j) (ii), 6, 17 of POCSO Act, Section 9 and 10 of Prohibition of Child Marriage Act, 2006 in Crime No.4 of 2019 on the file of the respondent police, seeks bail.

2. The case of the prosecution as per the de-facto complainant / District Social Welfare Officer is that the petitioner performed child marriage with the help of A2 who is the mother of the victim and A3, who is the mother of the petitioner and thereafter, committed aggravated penetrative sexual assault on the victim and now, the victims is two months pregnant.

3. The learned Counsel for appearing for the petitioner would submit that the petitioner is innocent. He would further submit that the mother of the victim had approached the mother of the petitioner saying that her daughter is major and based on the representation made by the mother of the victim, arranged marriage was performed between the petitioner and the victim and they were living together and the petitioner was under the bonafide belief that the victim was

a major. He would further submit that on the intimation given by the persons enimical to the family, the complaint was given by the District Social Welfare Officer to the police. He would submit that it is only an arranged marriage. Now the victim is two months pregnant and the mother of the petitioner and the mother of the victim have been arrested and they have been enlarged on bail. Hence, he prays for grant of bail to the petitioner.

4. The learned Additional Public Prosecutor would submit that the petitioner had performed child marriage with the victim with the help of the mother of the victim and the mother of the petitioner and after marriage committed aggravated sexual assault on the victim and the victim is pregnant. He would further submit that the investigation is pending.

5. Taking into consideration the facts and circumstances of the case and the submissions made by the learned counsels and also taking note of the fact that the petitioner is in judicial custody from 28.05.2020, this Court is inclined to grant bail to the petitioner, subject to the following conditions:

a) the petitioner is ordered to be released on bail on executing 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 and thereafter on his release;.

b) the petitioner shall execute two sureties for a sum of Rs.10,000/- (Rupees ten thousand only) each, before the Special Judge for Exclusive Trial of Cases under POCSO Act, Coimbatore, within a period of 15 days from the date of lifting of lockdown and commencement of the Court's normal functioning, 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 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 daily at 10.30 a.m for a period of one week and thereafter, 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.

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

-sd/-
30/06/2020

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 SPECIAL COURT FOR EXCLUSIVE TRIAL OF
CASES UNDER POCSO ACT, COIMBATORE.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
PERUR, COIMBATORE DISTRICT.

4 THE SUPERINTENDENT,
CENTRAL PRISON, TIRUPPUR.

CC to M/S. G.R.DEEPAK Advocate on payment of necessary charges

CRL OP.9679/2020

Date :30/06/2020

TA-17/07/2020