

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.06.2020

CORAM :

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.9683 of 2020

Palani

.. Petitioner

/versus/

State represented by
The Inspector of Police,
W-4, All Women Police Station,
Kilpauk, Chennai,
Crime No.4 of 2020.

.. Respondent

Prayer: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code, to enlarge the petitioner on bail in Crime No.4 of 2020 on the file of the Inspector of Police, W.4, All Women Police Station, Kilpauk, Chennai.

For Petitioner : Mr.A.B.Ashok

For Respondent : Mr.K.Prabhakar,
Addl Public Prosecutor

ORDER

(The case has been heard through video conference)

The petitioner who was arrested and remanded to judicial custody on 04.02.2020 for the alleged offence punishable under Sections 294(b) IPC and Section 8 of POCSO Act, 2012 in Crime No.4 of 2020 on the file of the respondent police, seeks bail.

2.The case of the prosecution as per the defacto complainant, one Malathi is that she has got three daughters and that there was a matrimonial dispute pending between herself and her husband and they were living separately for the past five years and she has also filed a petition for Divorce before the Family Court. While so, on 24.01.2020 she had gone for the work and on the same day her husband, who was inebriated condition came to her house had misbehaved with their daughter and when the same was questioned by the defacto complainant, the petitioner had abused her in filthy language.

3. The learned counsel for the petitioner would submit that there was a matrimonial dispute pending between the petitioner and the defacto complainant and a false complaint has been given against

the petitioner, as if, the petitioner had misbehaved with his own daughter. He would further submit that the allegation has been made only for the purpose of taking a ground before the Family Court. He would also submit that the petitioner was arrested on 04.02.2020 and he is in custody for more than 140 days and till date the respondent police have not filed the final report and thereby, the petitioner is entitled for bail by default as contemplated under Section 167(2) Cr.P.C.

4. The learned Additional Public Prosecutor for the respondent would submit that investigation has been completed, however, due to Covid-19 pandemic situation the final report has not been filed.

5. The petitioner was arrested on 04.02.2020 and he is in incarceration for more than 140 days. The respondent/police have not filed the final report till date. As per mandate of Section 167(2) Cr.P.C., the petitioner is entitled to mandatory bail.

6. 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, Samaynallur 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".

7. Taking into consideration the facts and circumstances of the case and that the petitioner is in custody from 04.02.2020, I am inclined to grant bail to the petitioner, subject to the following conditions :

(a) Accordingly, 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 learned Special Judge, Special Court for POCSO Act, Chennai, within 15 days from the date of lifting of the lockdown and the 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 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 daily at 10.30 a.m. for a period of one week and thereafter, every Monday at 10.30 a.m. until further orders.

(e) the petitioner to furnish the correct details of address along with mobile number to the Investigating Officer and to the concerned Court.

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

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

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

(i) 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];

(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/-
30/06/2020

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.

TO

1 THE SPECIAL JUDGE,
SPECIAL COURT FOR POCSO ACT,
CHENNAI.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI.

4 THE INSPECTOR OF POLICE,
W-4, AWPS, KILPAUK,
CHENNAI.

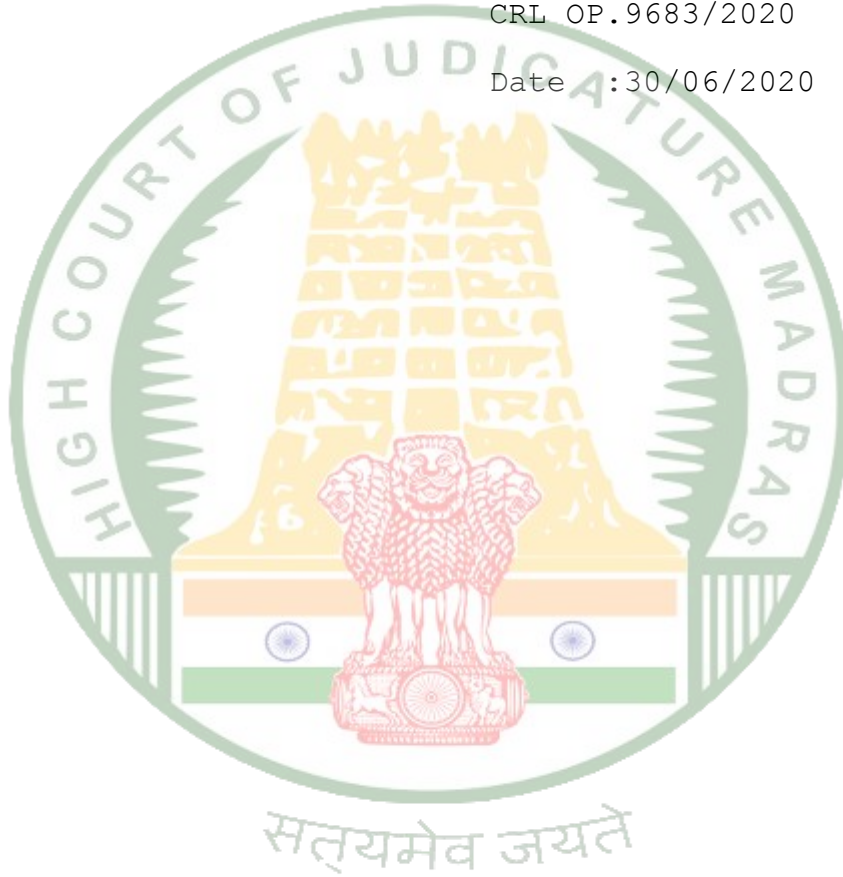
5 THE INSPECTOR OF POLICE,
SAMAYNALLUR POLICE STATION,
MADURAI DISTRICT.

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

CRL OP.9683/2020

Date :30/06/2020

TA-13/07/2020



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