

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2020

CORAM

THE HONOURABLE MR. JUSTICE A. D. JAGADISH CHANDIRA

Crl.O.P.No.10876 of 2020

S.P.Vadevel

... Petitioner/Accused

Vs.

The State Represented by,
The Inspector of Police,
AWPS-Avinashi Police Station,
Tiruppur District.
(Cr.No.3 of 2020)

...Respondent

Prayer: Criminal Original Petition filed under Section 438 of Cr.P.C., to enlarge the petitioner on bail in the event of his arrest in Connection with the Crime No.3 of 2020 pending on the file of the respondent police.

For Petitioner : Mr.S.Vinoth Kumar

For Respondent : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

ORDER

(This case has been heard through video conference)

The petitioner, who apprehends arrest at the hands of the respondent police for the alleged offences punishable under Section 354 A of IPC and Sec 7 r/w. 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO), in Crime No.3 of 2020, on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution as per the defacto complainant viz., Shamyuktha is that during the year 2015, one Devika w/o. Vadevel got introduced by the mother of the defacto complainant and thereafter she joined in the dance school run by the said Devika. Thereafter, the said Devika used her to take various dance programmes and thereafter since the defacto complainant got employment she wanted to leave the dance school. At that time, the accused Vadevel husband of Devika had come and compelled her not to leave the dance school and since she did not like his activities she wanted to leave the school. However, the mother of the defacto complainant who was having good relationship with Vadevel and his wife compelled her to go with the accused and his wife for programmes. During such time, the accused had sexually harassed her. During the year 2018, the defacto complainant got medical admission in Philipines and she left the dance school. However, whenever she came to India during the holidays, the accused used to take her to dance programmes. On

15.11.2019 around 7.30 p.m., the accused had come to her house and showed pornography films in a mobile phone and when the defacto complainant's mother, father and brother had come back to home, she had informed the same and subsequently she went to Philippines on 16.11.2019 and thereafter, she came back to India on 17.03.2020 and during Covid pandemic and she has given a complaint on 13.06.2020. Hence, the complaint.

3. The learned counsel for the petitioner would submit that the petitioner is an innocent person and he has been falsely implicated in this case. He would further submit that the defacto complainant is a MBBS student studying at Philippines and she has been instigated by her father and brother who suspect that the petitioner was having affair with the mother of the defacto complainant. He would further submit that the entire reading of the complaint would show that it is a motivated complaint. There was already a dispute between the petitioner and the defacto complainant's father with regard to business transaction earlier. The father of the defacto complainant and the petitioner were running a business as partners and the father of the defacto complainant had cheated the petitioner and therefore, the petitioner had reprimanded him, subsequently, he has been tagged in this case. On 20.08.2020, the de facto complainant posted abusive contents relating to the dance school run by the wife of the petitioner in the social media and the defacto complainant's father had threatened the petitioner and his family members. The petitioner given a complaint before the Avinashi Police Station. The enquiry was conducted by the Avinashi police and issued CSR No.40 of 2020 and later, coming to know that the brother of the defacto complainant has given a counter complaint before the All Women Police Station, Avinashi against the petitioner's wife and enquiry was conducted in CSR.No.45 of 2020 and the police compromised both the family members. Later, after the earlier counter complaints were closed the father of the defacto complainant has set up the defacto complainant for giving a complaint on 13.06.2020 regarding allegation relating to the year 2015 to particularly bring the case within the ambit of POCSO Act. Now the petitioner is aged about 20 years and she is a MBBS student, studying in Philippines which shows that the false complaint has been given against the petitioner to harass the petitioner. Hence, he prays for grant of anticipatory bail to the petitioner.

4. The learned Additional Public Prosecutor would submit that the defacto complainant is aged about 20 years and she is studying MBBS. The allegation against the petitioner is that during the year 2015 when the defacto complainant was minor, the petitioner had shown pornography video and touched her inappropriately. Thereafter, a complaint given by the petitioner and a counter complaint was given by the defacto complainant's brother and the enquiry was conducted by the police and both were closed. He would further submit that as far as this case is concerned The statement of the victim has been recorded under Section 164 Cr.P.C. Hence, he vehemently opposed the grant of anticipatory bail to the petitioner.

5. The learned counsel for the intervenor would submit that the petitioner along with his wife was running a dance school and the victim attended several dance programmes conducted by the school. The petitioner taking advantage had come to her house and misbehaved with the victim and shown pornography materials and touched her inappropriately. There was also a business dispute between the petitioner and the defacto complainant's father.

6. Taking into consideration the facts and submissions of the learned Counsel, this Court is inclined to grant anticipatory bail to the petitioner subject to the following conditions;

7. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen (15) days from the date on which the copy of the order is made ready, before the Judicial Magistrate, Avinashi on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties, each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[a] the petitioner and 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.

[b] the petitioner shall report before the respondent police everyday at 10.30 a.m., for a period of two weeks and thereafter every Monday at 10.30 a.m., until further orders.

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond either during investigation or trial.

[e] 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].

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

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

-sd/-

20/11/2020

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 JUDICIAL MAGISTRATE,
AVINASHI

2 THE CHIEF JUDICIAL MAGISTRATE
TIRUPPUR (FOR INFORMATION)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
AWPS-AVINASHI POLICE STATION,
TIRUPPUR DISTRICT

CC to M/S. S.VINOTH KUMAR Advocate on payment of necessary charges

CRL OP.10876/2020

Date : 20/11/2020

RVR 10/12/2020