

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2020

CORAM

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.11529 of 2020

Karuppusamy,
S/o.Rangan,
Kasipalayam,
Gobichettipalayam Taluk,
Erode District.

... Petitioner

- Vs. -

The Inspector of Police,
All Women Police Station,
Gobichettipalayam.
(Crime No.2 of 2020)

... Respondent

Prayer: Criminal Original Petition filed under Section 439 Cr.P.C. praying to enlarge the petitioner on bail in Crime No.2 of 2020 on the file of the respondent police.

For Petitioner :Mr.A.V.Arun

For Respondent :Mr.C.Iyyapparaj
Additional Public Prosecutor

ORDER

The petitioner, who was arrested and remanded to judicial custody on 16.04.2020 for the offence punishable under Section 6 of Protection of Children from Sexual Offences Act (POCSO Act) in Crime No.2 of 2020 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the victim in this case is 16 years old minor girl. The mother of the victim has lodged a complaint stating that she found the victim using mobile phone at odd hours and on suspicion, she got the phone and found that the petitioner, who is the neighbour, had been sending messages and communicating with her, when the same was questioned by her, the victim told that the petitioner had indulged in penetrated sexual assault with her. Further, the victim had stated that she used to be friendly with with petitioner's wife and she often used to go there and watch Television at the petitioner's house. Taking advantage of the absence of petitioner's wife, the petitioner had forced the victim and had physical relationship with her against her wish on several occasions. The victim was threatened not to reveal these facts to anyone and hence, she had been keeping quiet. After the victim's

mother persuasion, the victim had revealed all these facts. Hence, the complaint against the petitioner.

3. The contention of the petitioner is that the petitioner and the victim are neighbours and they had some previous enmity, for which, he had been falsely implicated in this case. He further submitted that the victim was having crush with the petitioner and she made advances towards the petitioner, which he had resisted. The victim had constantly sending messages and photographs and also conversing with the petitioner and that the petitioner had only advised the victim. The victim had also been writing several letters enticing the petitioner. The petitioner had been resisting the same, not revealed the same since it would affect the future of the victim. The petitioner's wife, who had occasions to see the letters and communications, picked up a quarrel and fight with the victim's mother and the victim's mother, instead of reprimanding her daughter, lodged a complaint against the petitioner. The petitioner is not the cause for the victim's present state. He would further submit that investigation has been completed in this case and charge sheet filed, to defend the case effectively, prepare for defence, he seeks bail. The petitioner submits that he

would abide by any condition imposed by this Court.

4. The learned Additional Public Prosecutor appearing on behalf of the respondent submitted that the victim's mother saw the victim using mobile phone, which was given by the petitioner, through which, the petitioner and the victim were in constant touch. On several occasion, the victim had been physically assaulted by the petitioner, taking advantage of her young adolescent age and the victim was not knowing the consequences, exploited the victim due to her physical and psychological state. The petitioner also threatened the victim girl not to reveal the facts to anyone. The victim is a minor school going girl, who had been exploited by the petitioner. The statement recorded under Section 164 of Cr.P.C, in which, the victim stated about the penetrative sexual assault made on her by the petitioner. Further, the petitioner and the victim girl are neighbours, if the petitioner is let out on bail, the victim would be put under psychological pressure and threat, hence, he opposed for the grant of bail to the petitioner. He would further submit that in this case, the mobile phones and the letters, which were produced by the petitioner's wife as well as the victim's mother through collected they are not relied by the prosecution.

5. Heard both sides. Perused the entire materials available on records.

6. It is seen that the alleged occurrence had taken place on 10.01.2020 and the complaint lodged only during April, 2020. Further, the victim was aware and conscious about the happenings. The genesis of the case is that the victim was using mobile phone, which was given by the petitioner. Strangely, the mobile phone and letters are withheld, which cause some doubt in the genesis of the case.

7. Considering the above facts and circumstances of this case, the period of incarceration and further, the investigation in this case is completed and charge sheet filed, this Court is 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 is confined on his 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 stay at Erode and report before the All Women Police Station, Erode daily at 10.30.a.m except on the days when he is to appear before the Trial Court. The petitioner shall not leave the municipal limits of Erode Town;

(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.

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

12.08.2020

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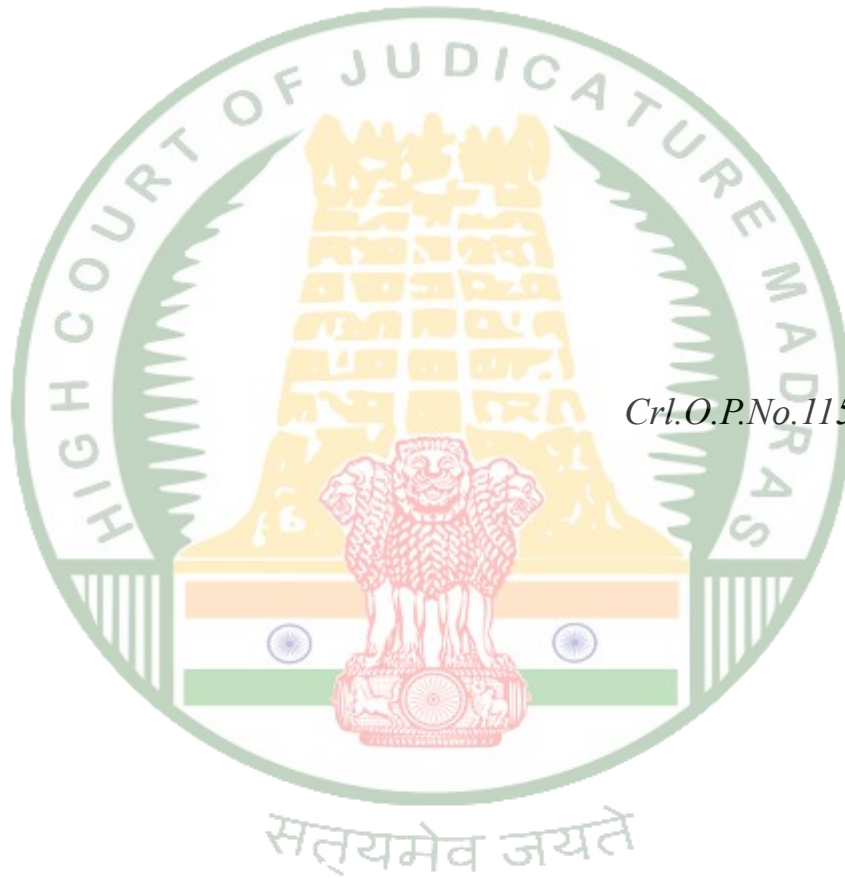
1. The Session Judge,
Mahalir Neethi Mandram,
Fast Track Mahila Court,
Erode.
2. The Inspector of Police,
All Women Police Station,
Gobichettipalayam.
3. The Superintendent,
Central Prison,
Coimbatore.
4. The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J

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