

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.08.2020

CORAM :

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

Crl.O.P.No.11382 of 2020

Murugan
S/o.Anbu

... Petitioner

Vs.

State rep. by its
The Inspector of Police,
All Women Police Station,
Salem District.
(Crime No.03 of 2016)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in connection with the Crime No.03 of 2016 in SSC.No.27 of 2019 in Old SSC No.59 of 2016 pending on the file of the Special Court for Exclusive Trail of case under POCSO Act.

For Petitioner : Mr.P.Tamilavel

For Respondent : Mr.T.Shunmugarajeswaran
Government Advocate (Crl. Side)

O R D E R

(The case has been heard through video conference)

The petitioner who was arrested and remanded to the judicial custody on 05.11.2019 for the alleged offences punishable under sections 366(A) IPC and 3 and 4 of the Protection of Children from Sexual Offences Act 2012, in Crime No.03 of 2016 on the file of the respondent police in SSC.No.27 of 2019 in Old SSC No.59 of 2016 pending on the file of the Special Court for Exclusive Trail of case under POCSO Act, seeks bail.

2. It is a case of jumped bail. The learned counsel appearing for the petitioner would submit that the petitioner was originally arrested and enlarged on bail and was regularly appearing before the trial Court in old SSC No.59 of 2016 on the file of the Mahila Court, Salem. Thereafter, the case was transferred to POCSO Court and was assigned a new SSC.No.27 of 2019 and due to miscommunication, the petitioner could not appear before the trial Court. Therefore, the learned trial Judge had issued Non Bailable Warrant against the petitioner on 13.08.2018. When the petitioner came to know about the issuance of warrant, he had voluntarily surrendered before the Court on 05.11.2019 and filed a petition to recall the warrant under Section 70(2) Cr.P.C. Whereas, the Court below had dismissed the same following which, the petitioner was remanded to judicial custody on

the same day. He would further submit that the petitioner is in custody for more than 8 months and he is ready to abide by any stringent conditions. Hence, he seeks for grant of bail to the petitioner.

3.The learned Government Advocate (Criminal Side) would submit that most of the witnesses had been examined. At that stage, the petitioner did not appear before the Court below on 13.08.2018 and thereby the trial Court had issued Non Bailable Warrant against the petitioner. Thereafter, the petitioner surrendered on 05.11.2019 by filing a petition under section 70(2) Cr.P.C to recall the warrant but, the same was dismissed subsequently, the petitioner was remanded to judicial custody. He would further submit that P.W.12 and P.W.13 were produced and examined by the petitioner and now the case stands posted for examination of school teacher to prove the age of the victim girl. He would further submit that if the petitioner is granted bail, there is every possibility that the petitioner would abscond again and the trial would be stalled. He would submit that the case was posted for examination of school teacher through video conference on 12.08.2020. Hence, he opposed to grant bail to the petitioner.

4.Taking into consideration of the facts and circumstances and the submissions made by the learned counsels and also of the fact that the petitioner has voluntarily surrendered before the Court below and he has been in custody from 05.11.2019, 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 condition to execute 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 out of which, one shall be a blood related surety, each for a sum of Rs.10,000/- (Rupees ten thousand only), before the learned Special Court for Exclusive Trial of Case under POCSO Act, Salem, within a period of two weeks after lifting of lockdown or the commencement of the Court's normal functioning whichever is earlier, 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 every day at 05.30 p.m. until further orders.

The petitioner shall appear before the Court below in person if normal work is resumed or appear through video conference on all hearing dates without fail through his counsel till the commencement of the Court's normal functioning and thereafter appear before the

Court in person on all hearing dates.

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

(f) the petitioner shall not abscond either during trial;

(g) the petitioner shall not tamper with evidence or witness either during 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.

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

-sd/-

03/08/2020

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 EXCLUSIV
E TRIAL OF CASE UNDER POCSO ACT, SALEM

2 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
SALEM DISTRICT.

CC to M/S.P.TAMILAVEL Advocate on payment of necessary charges

CRL OP.11382/2020

Date :03/08/2020

RD 01/09/2020

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