

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.09.2020

CORAM :

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

CRL.O.P.No.13765 of 2020

Anand

... Petitioner

Vs.

State Rep. by  
Inspector of Police  
W-15, All Women Police Station  
Royapuram, Chennai-13  
(In Cr.No.3 of 2020)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in concerned with Crime No.3 of 2020, on the file of the respondent police.

For Petitioner : Mr.J.William Shakesphere

For Respondent : Ms.S.Thankira  
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 judicial custody on 09.07.2020 for the offences punishable under Sections 6 R/w. 5(m) (n) of POCSO Act, in Crime No.3 of 2020, seeks bail.

2.The case of the prosecution as per the defacto complainant Kalaivaniis that the petitioner who is her husband committed penetrative sexual assault on her minor daughter. Hence, the complaint.

3.The learned counsel appearing for the petitioner would submit that the petitioner is an innocent and a false case has been given by the defacto complainant to prevent the custody of the child being given to the petitioner. He would submit that the marriage between the petitioner and the defcto complainant was a love marriage and after the marriage, they got one female child namely Giriya who is now three years old and the petitioner is working as a P.E.T. Teacher in a private school. He would submit that due to misunderstanding between the petiitoner and his wife, the wife of the petitioner / defacto complainant had filed a divorce petition in H.M.O.P. No.219 of 2017 before the Sub Court, Ponneri. Thereafter, the petitioner had fild a petition in I.A. No.38 of 2018 seeking for custody of his daughter and the learned Judge had directed the defacto complainant to produce the child in the Sub Court premises every 1<sup>st</sup> and 3<sup>rd</sup> Sunday between 10 a.m. to 1.30 p.m. till the disposal of the main H.M.O.P.

Against such order, the defacto complainant preferred CRP.(PD). No.1606 of 2019 and this Court in C.M.P.No.10595 of 2019 was pleased to confirm the order of visitation rights granted by the Sub Court, Ponneri. The defacto complainant did not act upon the order of this Court and thereby, the petitioner filed a contempt petition before the High Court in Cont.P.No.1931 of 2019 and this Court by order dated 04.02.2020, modified the earlier order and directed the defacto complainant to hand over the child to the petitioner every Sunday at the Advocate's office at Thambu Chetty Street, Goroge Town, Chennai, between 10. a.m. to 1.30 p.m. and the said contempt petition is still pending. While so, on 07.07.2020, the defacto complainant had handedover the child to the petitioner and the petitioner had taken the child to his sister's house where his sister and mother and other relatives are there. The child was seen shabby and thereby, the petitioner gave bath to the child in the presence of his mother and sister and for obvious reasons, a false complaint has been given as if the petitioner misbehaved with the child. He would further submit that the entire complaint is a motivated one and the child is tutored to give a statement to suit the convenience of the complainant. He would further submit that a false complaint has been given only to avoid giving custody of the child to the petitioner. He would further submit that the petitioner is a teacher and he did not misbehave with his child and that he has been suffering incarceration from 09.07.2020 Hence, he prays for grant of bail.

4.The learned Government Advocate (Criminal Side) would vehemently oppose stating that the petitioner who is the father of the child has committed penetrative sexual assault. She would further submit that the victim has been subjected to medical examination and her statement has also been recorded under Section 164 Cr.P.C.

5. The Accident Register and the statement recorded from the victim under Section 164 Cr.P.C. has been produced before this Court and this Court perused the Accident Register as well as the statement recorded from the victim under Section 164 Cr.P.C.

6.Taking into consideration the facts and circumstances and the submissions made by the learned counsels and also considering the period of incarceration suffered by the petitioner, 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;

(b) Thereafter, 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 Special Court for Exclusive Trial of POCSO Cases, Chennai, within a period of two weeks from the date of commencement of the Court's normal functioning, failing which the bail granted by this Court shall stand dismissed

(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 on his release from prison, shall report before the respondent everyday at 10.30 a.m. for a period of one week and thereafter, every Saturday at 10.30 a.m. until further orders.

(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 Trial Judge 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 Trial Judge 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.

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

-sd/-

23/09/2020

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 FOR POCSO CASES,  
CHENNAI

2 THE PUBLIC PROSECUTOR  
HIGH COURT, MADRAS.

3 INSPECTOR OF POLICE,  
W-15, ALL WOMEN POLICE STATION,  
ROYAPURAM, CHENNAI-13.

4 THE SUPERINTENDENT,  
CENTRAL PRISON, PUZHAL,  
CHENNAI

+2 CC to M/S. J.WILLIAM SHAKESPHERE Advocate on payment of  
necessary charges Sr.6395

CRL OP.13765/2020

Date :23/09/2020

RVR 24/09/2020



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