

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2020

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.13768 of 2020

Govindaraj

... Petitioner/ Accused

Vs.

The State Represented by,

The Inspector of Police,

Thandarampattu,

Tiruvannamalai.

(Crime No. 375 of 2019)

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 439 Cr.P.C., to enlarge the petitioner on bail in Crime No.375 of 2019, pending investigation on the file of the respondent police.

For Petitioner : Mr.Vijay Gurudass

For Respondent : Mr.T.Shunmugarajeswaran

Government Advocate (Crl.Side)

ORDER

(This case has been heard through video conference)

The petitioner, who was arrested and remanded to the Judicial Custody on 17.07.2019, for the offences punishable under Sections 3(a), 4, 5(1) and 6 of POCSO Act, 2012, in Crime No. 375 of 2019, on the file of the respondent police seeks bail.

2 The case of the prosecution as per the defacto complainant viz., Sekar, who is the father of the victim girl is that, his minor daughter was found missing. Thereafter, during the course of investigation, it came to light that the petitioner had kidnapped victim minor girl and had married the girl and thereafter, they were living together as husband and wife. During such time, the victim has also become pregnant and that she delivered still born child. Later, the victim was secured and the petitioner was arrested.

3 The learned counsel appearing for the petitioner would submit that the petitioner is an innocent person and he has been falsely implicated in this case. He would submit that the petitioner is a villager and that he and the victim girl were having love affair and without understanding the consequences, they have eloped from the house and that they were living as husband and wife along with the petitioner's parents. Later due to some misunderstandings between the petitioner's parents, they came out and they started to live separately and the victim has also become pregnant and she delivered still born child. He would submit that while they were living together, on the complaint given by the father of the victim, the petitioner was arrested. He would further submit that the victim was taken to Magistrate and the Statement under Section 164 Cr.P.C., has been recorded, wherein, she has stated that she and the petitioner were in love with each other and that since, it was objected by her father, she had eloped with the petitioner and they are living together as husband and wife. She had also stated that after attaining majority, she will go and live with the petitioner.

4 The learned counsel appearing for the petitioner would reiterate and submit that the petitioner is a villager and without understanding the consequences of the POCSO Act, had committed the offence and that the petitioner was arrested on 16.07.2020. He would further submit that the medical examination of the petitioner as well as the victim girl has been completed and the statement under Section 164 Cr.P.C has also been recorded. Hence, he prays to grant bail to the petitioner.

5 The learned Government Advocate (Crl.Side) appearing for the respondent would submit that the petitioner had kidnapped the minor daughter of the defacto complainant and he has committed penetrative sexual assault on her and that the victim delivered still born child and they were living together as husband and wife and the respondent police has arrested the petitioner. He would further submit that the Statement recorded from the victim under Section 164 Cr.P.C., has not supported the case of the prosecution with regard to kidnap. However, he opposed to grant bail to the petitioner.

6 Heard the learned counsels and perused FIR and also materials placed on record.

7 Taking into consideration of the facts and submissions made by the learned counsels and also considering the fact that the petitioner is in jail from 17.07.2019, 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 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, each for a sum of Rs.10,000/- (Rupees Ten Thousand only), before the learned Special Court for Trial of Cases under POCSO Act, Thiruvannamalai, within 15 days from the date of 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 everyday at 10.30 a.m. for a period of two weeks and thereafter on every Monday 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 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];

(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.

-sd/-
11/09/2020

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 TRAIL
OF CASES UNDER POCSO ACT, THIRUVANNAMALAI

2 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
THANDARAMPATTU, THIRUVANNAMALAI.

CC to M/S.VIJAY GURUDASS Advocate on payment of necessary charges

CRL OP.13768/2020

Date :11/09/2020

GKS:15/09/2020

WEB COPY