



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.09.2020

CORAM :

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

Crl.O.P.No.13882 of 2020

and

Crl.M.P.No.5490 of 2020

Dr.S.Aswin

... Petitioner

Vs.

The State Rep. by
Inspector of Police
All Women Police Station - Salem Town,
Salem District.

.. Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in Crime No.13 of 2019 on the file of the Inspector of Police, All Women Police Station, Salem Town.

For Petitioner : Mr. S.Conscioius Ilango

For Intervenor : Mr.K.Shiraj(Father of Ms.Mahadi Begum)
for Ms.Mahadi Begum (Party in Person)

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 judicial custody on 25.08.2020 for the offence punishable under Sections 376, 420, 506(2), 294(b) IPC, in Crime No.13 of 2019, on the file of the respondent police, seeks bail.

2.The case of the prosecution as per the defacto complainant Mahadi Begum is that she belongs to Muslim community. She had joined MBBS course in a private Medical College namely Vinayaka Mission's Kirupananda Variyar Medical College, Salem, in the year 2015 and while she was studying in the second year i.e. 2017, the petitioner accused was studying in P.G. degree of M.S.(Ortho) in the same college. While so, the petitioner accused had got acquaintance with her through face book. Thereafter, both of them started loving each other. The petitioner accused had once invited her to his room in GG



Complex and when they were there, he had induced her on the promise of marrying her and had sexual relationship with her. Thereafter, on several occasions he had sexual relationship with the defacto complainant by assuring that he will marry her. Thereafter, during the month of May 2019, the petitioner after completing his P.G. vacated his room and went to his native Madurai. Subsequently, on 21.06.2019, he had returned to Salem and had sexual relationship with her on the assurance that within a week he would get consent from his father and marry her. Later the petitioner avoided to talk about the marriage and he went to Madurai. In such circumstances, the defacto complainant went to Madurai on 09.07.2019 to meet the petitioner. At that time also the petitioner informed the defacto complainant that his father is not well and that he will get his consent within two days. Later, the accused informed that since, they belong to difference religions, the petitioner's father was not agreeing for their marriage and had informed her not to contact him. On 11.07.2019, the defacto complainant had again gone to Madurai and met the petitioner and his father and requested to arrange for marriage. The petitioner as well as his father informed that in medical college having sexual relationship is usual one and the petitioner advised her to forget the incident and to marry a person belong to her religion. Further, he had threatened her if she comes again to meet him at Madurai, she would face dire consequences. Thereafter, the defacto complainant informed to her father who had spoken with the petitioner and his father on 16.07.2019 and demanded justice. At that time, the accused had informed that they will come to Salem in two days and the issue could be sorted out and they requested the defacto complainant and her father not to take any action. On 17.07.2019, the petitioner and his father had come to Salem and joined the meeting which was held in a hotel wherein the petitioner and his father informed that the marriage between the petitioner and one Doctor Sindhu has been fixed and hence they cannot marry the defacto complainant. The father of the petitioner also used filthy language and assaulted the defacto complainant and he declared that she cannot marry his son. The petitioner and his father also challenged that if she comes to their place for asking to marry, they will do away and her life. On 21.07.2019, the defacto complainant lodged a complaint before the Commissioner of Salem and the same was forwarded to Kondalampatti Police Station following which, an enquiry was conducted in C.S.R.783 of 2019. During the enquiry, the petitioner and his father along with an Advocate appeared before the police, expressed their regret for their acts and promised to conduct the marriage between the defacto complainant and the petitioner and informed that the Betrothal will be held on 10.11.2019 and they also executed a deed of undertaking to that extent on 24.07.2019. Whereas, contrary to the undertaking, the petitioner and his father on 06.08.2019, informed that they have influence in Government and the petitioner would not marry her and if she comes to Madurai, she will be done to death. Thereafter, the defacto complainant filed a petition under 156(3) Cr.P.C. before the Judicial Magistrate, Additional Mahila Court, Salem and the learned Magistrate by order dated 12.09.2019 directed the first respondent to register the case and investigate the matter. Subsequently, the respondent registered the present case.



3.The learned counsel appearing for the petitioner would submit that the petitioner was arrested on 25.08.2020 at Bengaluru Airport when he had returned from London, pursuant to the look out circular issued at Bengaluru Airport. He would further submit that a bare reading of FIR would expose that a case of consensual affair has been projected as a case of rape. He would further submit that the petitioner and the defacto complainant are grownup adults. The petitioner was doing his P.G. Course in Medicine and the defacto complainant was doing her 2nd year MBBS and both of them were aware of the consequences. Even as per the complaint, the petitioner and the defacto complainant were college mates and they got acquainted through social media and it is the defacto complainant who had visited the petitioner's hostel room. Further, the defacto complainant and her mother were living in a house in Salem and in the absence of the mother of the defacto complainant, she invited the petitioner to her house where the petitioner is alleged to have stayed with her for days and that the relationship was mutual and consensual and there there is no allegation as if the petitioner committed any forceful sexual assault on her. He would further submit that after the arrest of the petitioner, the potency test on the petitioner has been conducted on 01.09.2020 and thereafter a petition for police custody was filed by the respondent on 07.09.2020 and the petitioner was taken into police custody on 08.09.2020 and after investigation and enquiry, he was produced before the Court on the same day . He would submit that the statement under section 164 Cr.P.C. has been recorded from the victim girl and the medical examination in respect of the victim has also been conducted. Hence, the further custody of the petitioner may not be required and as stated earlier it is not a case of forcible or violent rape and that it is only a consensual affair between two grown up persons who studied in a medical college. He would further submit that the petitioner has been in judicial custody for 22 days from 25.08.2020. Hence, he prays for grant of bail to the petitioner.

4.The learned Government Advocate (Crl. Side) appearing for the respondent police would vehemently oppose stating that the petitioner on the false promise and assurance of marrying the victim girl had sexual relationship with her and thereafter cheated her. He would submit that the defacto complainant and the petitioner were college mates in Vinayaka Mission's Kirupananda Variyar Medical College, Salem. While the petitioner was doing his P.G. in M.S. (Ortho), the defacto complainant was doing her 2nd year MBBS Course and they become friends through social media. Thereafter, they had continued with their relationship. The petitioner had initially called her to his room GG complex and had sexual intercourse on 23.07.2017 and thereafter on several occasions viz., during July 2018, May 2019 and during the period between 21.06.2019 to 24.06.2019, he had sexual intercourse with the defacto complainant on several occasions. Thereafter, he refused to marry her on the ground of difference in religion. The victim initially had given a complaint before Kondalampatti police station. During enquiry, the petitioner had given a written undertaking that he will marry the defacto complainant and later refused to marry her. He would further submit



that the petitioner accused was arrested at the Bangalore Airport on 25.08.2020 and that the medical examination in respect of the petitioner/accused is completed and the police custody was also taken on 08.09.2020 and thereafter, he was surrendered before the Court. He would submit that the potency test on the petitioner was conducted and the medical examination on the victim girl has also been completed and the statement of the victim girl has been recorded under Section 164 Cr.P.C.. However, he would submit that investigation is pending and he would oppose grant of bail.

5. The father of the defacto complainant Mr. Shiraj appeared on behalf of the victim girl through video conferencing and represented on behalf of her. He vehemently opposed stating that the petitioner on the false promise of marriage, induced the girl aged 19 years while she was doing MBBS course and had sexual intercourse with her on several occasions and thereafter refused to marry her. He would submit that the petitioner not only cheated the girl but, he had also given a false complaint against the victim girl and her parents before the Madurai Police. However, the Madurai Police after enquiring the case, found that the petitioner has cheated the girl. He would further submit that earlier during enquiry at Kondalampatti Police Station and also at Madurai Police Station, the petitioner gave undertakings to marry the defacto complainant but, thereafter, he refused to marry her and thereby, cheated the defacto complainant.

6. This Court heard the learned Counsels as well as the intervenor who appeared Party in Person. Perused the materials on record and also the statement of the victim recorded under Section 164 Cr. P.C.

7. Taking into consideration of the facts and circumstances and the submissions made by the learned counsels and the fact that the medical examination in respect of the petitioner as well as the victim girl has been completed and considering the period of incarceration of the petitioner from 25.08.2020, 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) the petitioner on his release from prison, shall report before the respondent police daily at 10.30 a.m. and 5.30 p.m. until further orders.

(c) the petitioner shall within a period of two weeks from the date of commencement of the Court's normal functioning, execute a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand Only) with two sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate, Additional Mahila Court, Salems, failing which, the bail granted by this Court shall stand dismissed automatically.



(d) the petitioner shall surrender his pass port before the concerned Magistrate at the time of executing sureties. The petitioner shall not leave the state of Tamil Nadu without the permission of the Court. If the pass port is available with the respondent police, it shall be produced before the concerned Court and it shall not be returned to the petitioner without the permission of this Court.

(e) 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;

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

(g) the petitioner shall not abscond either during investigation or trial;

(h) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(i) 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];

(j) 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. Consequently, connected Miscellaneous petition is closed.

-sd/-
16/09/2020

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.



1 THE JUDICIAL MAGISTRATE,
ADDITIONAL MAHILA COURT,
SALEM DISTRICT.

2 THE JAILER
SUB JAIL, SANKAGIRI,
SALEM.

3 THE JAILER
ATTUR JAIL, SALEM.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
SALEM TOWN,
SALEM DISTRICT.

CC to M/S.S.CONSCIOIUS ILANGO Advocate on payment of necessary
charges

CRL OP.13882/2020
& CRL.MP.5490/2020

Date :16/09/2020

cs 21/09/2020