

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.09.2020

CORAM :

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

CRL.O.P.No.14733 of 2020

GANESH @ RAJAGANESH

... Petitioner

Vs.

STATE; rep. by the Inspector of Police, ... Respondent
AWPS, SALEM TOWN,
SALEM District.
(Crime No.16 of 2020)

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in Crime No.16 of 2020 on the file of the respondent police.

For Petitioner : Mr.B.Vasudevan

For Respondent : Ms.S.Thankira
Government Advocate (Crl. Side)

ORDER

(The case has been heard through video conference)

The petitioner, who was arrested and remanded to judicial custody on 10.08.2020 for the offences punishable under **Section Girl Missing @ 366 IPC and Section 5 (1) read with 6 of POCSO Act, in Crime No.16 of 2020**, on the file of the respondent police, seeks bail.

2. The case of the prosecution as per the defacto complainant Syed Hajishullah is that his minor daughter aged 16 years who had gone to work, did not return back home and he had suspected that one Ganesh would have taken his minor daughter. Based on his complaint, originally the case was registered under the caption "Girl Missing" and thereafter, during the course of investigation, it came to light that the petitioner accused had kidnapped the victim girl and committed penetrative sexual assault on her.

3. The learned counsel appearing for the petitioner would submit that the petitioner and the victim girl were colleagues who worked in a Fancy store and that they fell in love. Since, they belong to different religions, it was opposed by the parents of the victim girl and thereby, she eloped from the house and the petitioner being a young man aged 21 years, without understanding the consequences and rigors of the POCSO Act, had taken her to

Kallakkurichi and they have also had physical relationship. Thereafter, they were secured by the respondent police. He would further submit that the statement of the victim girl has been recorded under Section 164 Cr.P.C. wherein, she had stated that she herself came along with the petitioner. He would also submit that the medical examination in respect of the petitioner as well as on the victim girl had been completed and the petitioner has been suffering incarceration for 50 days from 10.08.2020 and that he is prepared to abide by any stringent condition. Hence, he prays for grant of bail to the petitioner.

4. The learned Government Advocate (Crl.Side) appearing for the respondent would oppose stating that the petitioner had kidnapped the minor daughter of the defacto complainant and committed penetrative sexual assault on her against her wish. She would further submit that the statement of the victim girl under Section 164 Cr.P.C. has been recorded and the medical examination in respect of the petitioner as well as on the victim girl has been completed.

5. Heard the learned Counsels and perused the materials placed on record as well as the statement of the victim girl recorded under Section 164 Cr.P.C.

6. Taking into consideration of the facts and circumstance of the case and also considering the period of incarceration undergone by the petitioner from 10.08.2020, 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 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 Additional Mahila Court (Judicial Magistrate Level), Salem, and on further conditions that;

(b) 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;

(c) the petitioner shall stay at Namakkal and report before the Namakkal Town Police Station everyday at 10.30 a.m. until further orders. The petitioner shall not enter into the jurisdictional limits of the respondent police.

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

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

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

(g) 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];

(h) 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/-
28/09/2020

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 ADDITIONAL MAHILA COURT (JUDICIAL
MAGISTRATE LEVEL), SALEM.

2 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
AWPS, SALEM TOWN,
SALEM DISTRICT.

5 THE OFFICER INCHARGE
NAMAKKAL TOWN POLICE STATION
NAMAKKAL.

CC to M/S B.VASUDEVAN Advocate on payment of necessary charges

CRL OP.14733/2020

Date :28/09/2020

TA-30/09/2020