

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.10.2020

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA
Crl.O.P.No.15370 of 2020

G.Saravanan

... Petitioner

Vs.

The State Represented by
The Inspector of Police
Pennagaram All Women Police Station,
Dharmapuri District
(FIR No.12 of 2020) ... Respondent

Prayer: Criminal Original Petition filed under Section 439 Cr.P.C. to enlarge the petitioner on bail in F.I.R. No.12 of 2020, on the file of the respondent police.

For Petitioner : Mr.C.Palanisamy

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 30.07.2020 for the offence punishable under **Sections 3 read with 4 of POCSO Act 2012 and Section 9 of Prohibition of Child Marriage Act 2006**, in Crime No.12 of 2020 on the file of the respondent police, seeks bail.

2. The case of the prosecution as per the defacto complainant Deepa is that her father had deserted her mother and her mother was also a mentally retarded person. While so, she used to go to her uncle's house and that her uncle taking into consideration her family situation, had arranged for marriage between her and one Saravanan / the petitioner herein, who is his neighbour. However, since, the victim had not completed 18 years, the neighbours had told that the marriage should not be conducted. Meanwhile, the defacto complainant had developed relationship with the accused. Thereafter, the petitioner/accused had informed her that the marriage will be performed

between them and he had taken her to a Vinayagar Temple and performed marriage with her. Thereafter, since, there was Kumbabishegam in the village, nothing had happened in between them for 48 days. While so, the victim wanted to get away from the relationship. While so, On 29.07.2020, the petitioner had compelled her and had sexual intercourse with her. Thereby, the victim girl gave a complaint before the Village Administrative Officer.

3. The learned counsel appearing for the petitioner would submit that the petitioner is an innocent and he has been falsely implicated in this case. He would submit that the marriage between the petitioner and the victim was performed by the maternal uncle of the defacto complainant stating that the victim had completed 18 years. Even as per the complaint, the victim was living in the house of the petitioner for 48 days from 24.06.2020 and admittedly, the petitioner had not even touched the victim and thereafter on 29.07.2020 they had consensual affair on the belief that the victim is going to be his wife. Thereafter, due to matrimonial dispute she left home and given a false case against the petitioner as if the petitioner sexually assaulted her. He would further submit that the petitioner is prepared to marry the victim girl once she attains majority and the statement of the victim girl has been recorded under Section 164 Cr.P.C. and the medical examination in respect of the petitioner and the victim girl has also been completed. He would further submit that the petitioner has been suffering incarceration from 30.07.2020. Hence, he prays for grant of bail to the petitioner.

4. The learned Government Advocate (Crl.Side) appearing for the respondent would vehemently oppose stating that the petitioner committed sexual assault on the victim girl. He would further submit that the victim has not attained majority. However, the marriage between the petitioner and the victim girl was performed on the instigation of the maternal uncle of the victim girl. He would submit that the statement of the victim girl has been recorded under Section 164 Cr.P.C. and the medical examination in respect of the petitioner as well as the victim girl has been completed.

5. Heard the learned Counsels and perused the statement of the victim girl recorded under Section 164 Cr.P.C.

6. Taking into consideration the facts and submissions made by the learned counsels and also considering the period of incarceration undergone 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 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 **Fast Track Mahila Court, Dharmapuri**, 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 report before the respondent police everyday at 10.30 a.m. until further orders.

(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];

(j) If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

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

-sd/-
05/10/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE FAST TRACK MAHILA COURT,
DHARMAPURI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
PENNAGARAM ALL WOMEN POLICE STATION,
DHARMAPURI DISTRICT.

+1CC to M/S. C.PALANISAMY Advocate on payment of necessary charges SR NO.6631

CRL OP.15370/2020

Date :05/10/2020

MK:06/10/2020

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