

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2020

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CrI.O.P.No.15340 of 2020

1.Mohan

2.Parimala

.. Petitioners

Vs.

The State rep. by
The Inspector of Police
All Women Police Station
Udhagamandalam
Cr.No.5 of 2020

.. Respondent

Prayer: Criminal Original Petition filed under Section 438 of Criminal Procedure Code, praying to enlarge the petitioners on bail in the event of their arrest in Crime No.5 of 2020 pending investigation on the file of the respondent police.

For Petitioners : Mr.M.Velmurugan

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

O R D E R

(The case has been heard through video conference)

The petitioners, who apprehend arrest at the hands of the respondent police for the alleged offences under Sections 9 & 10 of the Prohibition of Child Marriage Act r/w 5(1) & 6 of POCSO Act, in Crime No.5 of 2020 on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution is that the 16 years old victim's mother was murdered by the father of the victim girl viz., A4, due to family dispute and that he was convicted and after coming out of jail, he married A5 one Devi and they started to live in Cheranur near Manjur, Thottacombai and the victim girl was also residing in the same village with her grand parents. During the year 2019, when the victim girl was studying 11th std, at the instance of Devi (A5), the step mother of the victim, the petitioner came from Kandal area and saw the victim girl for marrying her and at that time, the victim girl informed him that she is only 16 years old and that she has inclination only to study more and refused for the said marriage proposal, but the father of the victim girl one

Sundarrajan/A4 and her step mother Devi (A5) compelled the victim girl for marriage and the marriage was also performed on 30.01.2020 with one Chandrasekar (A1), who is the son of the petitioners. Thereafter, the victim and A1 were staying in a rented house in Kandal as husband and wife and they had sexual intercourse and later, on 14.08.2020, due to a family dispute, A1-Chandrasekar and his family members brought the victim girl to her parent's house and the petitioner had told them that he is not interested in living with the victim girl. Thereafter, a complaint was given by the victim girl through the Child Help Line and the case was registered for the alleged offence.

3. The learned counsel for the petitioners would submit that the petitioners are parents of the 1st accused. He would further submit that the marriage between the petitioners' son and the victim girl is an arranged marriage and that the father and step mother of the victim/de-facto complainant represented to the petitioners that the victim has attained the majority and she is eligible for marriage. He would further submit that the petitioners are tribals who are uneducated and also illiterates and believed the representation made by the father and step mother of the victim girl, had arranged for the marriage of the de-facto complainant and their son. He would further submit that after the marriage, the victim girl was also living with their son and only due to matrimonial dispute, she went away from the matrimonial house. He would further submit that the 1st accused has been enlarged on bail by this Court in Crl.O.P No.15613 of 2020 on 08.10.2020. Therefore, he prays to grant anticipatory bail to the petitioners.

4. The learned Additional Public Prosecutor vehemently opposed by stating that the father and step mother of the victim girl performed the marriage of the minor victim girl with A1, who is the son of the petitioners and both the victim girl and A1 were living in the house of the petitioner. He would further submit that in the statement recorded under Section 164 Cr.P.C, the victim girl had stated that she informed A1 that she is a minor girl, even then, he agreed for the marriage.

5. Taking into consideration the facts and circumstances of the case and also the similarly placed co-accused has been enlarged on bail, this Court is inclined to grant anticipatory bail to the petitioners, subject to the following conditions:

a) Accordingly, the petitioners are ordered to be released on bail, in the event of arrest or on their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Sessions Judge, Udhagamandalam, on condition that the petitioners shall execute a separate bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[b] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[c] the 1st petitioner shall report before the respondent police on every Monday at 10.30 a.m until further orders and the 2nd petitioner shall report before the respondent police as and when required for interrogation.

[d] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[e] the petitioners shall not abscond either during investigation or trial.

[f] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners 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].

[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

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

-sd/-

12/10/2020

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 SESSIONS JUDGE
UDHAGAMANDALAM.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
UDHAGAMANDALAM.

+1 CC to M/S. M.VELMURUGAN
charges SR.No.6829

Advocate on payment of necessary

CRL OP.15340/2020

Date :12/10/2020