

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.10.2020

CORAM :

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

CRL.O.P.No.15359 of 2020

K.Balakrishnadass @ Balaji

... Petitioner

Vs.

The State,
Rep by its, The Inspector of Police,
C1, Kattor Police Station,
Gandhipuram,
Coimbatore.
(Crime.No.1227/2020)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in Crime No.1227 of 2020 on the file of the respondent police

For Petitioners : Mr.K.Myilsamy

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 26.08.2020 for the offence punishable under Section 67(A), 67(b) of Information Technology Act 2000 and Section 15(1) of Protection of Children from Sexual Offences Act of 2012, in Crime No.1227 of 2020 on the file of the respondent police, seeks bail.

2.The case of the prosecution as per the National Center for Missing and Exploited Children is that the petitioner had downloaded child pornographic materials in his phone and later shared the same to other persons. During investigation, it was found that the petitioner had done it through his mobile phone.

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 further submit that the petitioner is a daily wager and he had downloaded some application by mistake and it got stored in his phone without his knowledge. Later, his phone has been hacked by some one else and the pornographic material have been

uploaded without his knowledge. He would submit that the mobile phone which is alleged to have been used by the petitioner has been seized by the respondent police. He would submit that the petitioner was arrested on 26.08.2020 and he has been suffering incarceration for more than 45 days. Hence, he prays for grant of bail.

4.The learned Government Advocate (Crl.Side) appearing for the respondent would vehemently oppose stating that the petitioner had downloaded child pornographic materials and also shared the same to third parties. He would submit that the case has been registered based on the intimation given by the National Center for Missing and Exploited Children. He would submit that the mobile phone which is stated to have been used for uploading child pornographic material, has been seized and the investigation is pending.

5.Taking into consideration of the facts and submissions made by the learned counsels and also taking into consideration the period of incarceration suffered 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 learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, 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];

(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/-
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,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES
UNDER POCSO ACT AT COIMBATORE.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
C1, KATTOR POLICE STATION,
GANDHIPURAM, COIMBATORE.

+1 CC to M/S. K.MYILSAMY Advocate on payment of necessary charges
SR.No.6799

WEB COPY

CRL OP.15359/2020

Date :12/10/2020

cs 13/10/2020