

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2020

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Cr1.O.P.No.15613 of 2020

Chandrasekar

... Petitioner

Vs.

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

... Respondent

Prayer: Criminal Original Petition filed under Section 439 Cr.P.C. to enlarge the petitioners on bail in Crime No.5 of 2020 on the file of the Inspector of Police, All Women Police Station, Udhagamandalam.

For Petitioner : Mr.M.Velmurugan

For Respondent : Mr.T.Shunmugarajeswaran
Government Advocate (Cr1. 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 offences punishable under Section 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 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) the petitioner herein. Thereafter, the victim and the

petitioner 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, the petitioner / Al Chandrasekar and her family members brought the victim girl to her parents' 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 appearing for the petitioner would submit that the petitioner is innocent and he has been arraigned as A1 in this case. He would further submit that the petitioner is residing in Kandal village and that the father and the step mother of the victim girl informed him that the victim has attained majority and thereafter only the marriage was performed between them in the presence of their relatives and friends. The petitioner believing the representation made by the father and the step mother of the victim girl, had agreed for the marriage and that they were living as husband and wife at Kandal Village. While so, due to matrimonial dispute, the victim left the matrimonial house and went to her parents' house and gave a complaint that the marriage was performed against her wishes. He would further submit that till date the victim girl has not stated to the petitioner that she is a minor girl and the petitioner was also living with her believing that she has attained majority. He would further reiterate that the petitioner and the victim girl belong to the same community (hill tribes) and that the petitioner believing the representation of the father that the victim has attained majority, he agreed for the marriage. He would further submit that the petitioner was arrested on 26.08.2020 and in judicial custody for the past 45 days. He would further submit that the medical examination in respect of the victim girl and the petitioner is over and the statement under 164 Cr.P.C. has also been recorded from the victim girl.

4.The learned Government Advocate (Crl.Side) appearing for the respondent would vehemently oppose stating that the father and the step mother of the victim girl performed the marriage of the minor victim with the petitioner on 30.01.2020. The date of birth of the victim girl is 14.10.2003 and that the accused has performed the child marriage and they were living in the house of the petitioner. He would further submit that the statement under 164 Cr.P.C. has been recorded, wherein she had stated that she informed the petitioner that she is a minor girl even then the petitioner has agreed for the marriage.

5.Heard the learned counsels on either side. Perused the statement recorded under 164 Cr.P.C. and other documents placed on record.

6.Taking into consideration of the facts and submissions made by the learned counsels and also considering 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, the Nilgiris, 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 on his release from prison 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.

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

-sd/-

08/10/2020

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
NILGIRIS.

2 THE JAILER
COIMBATORE PRISON.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

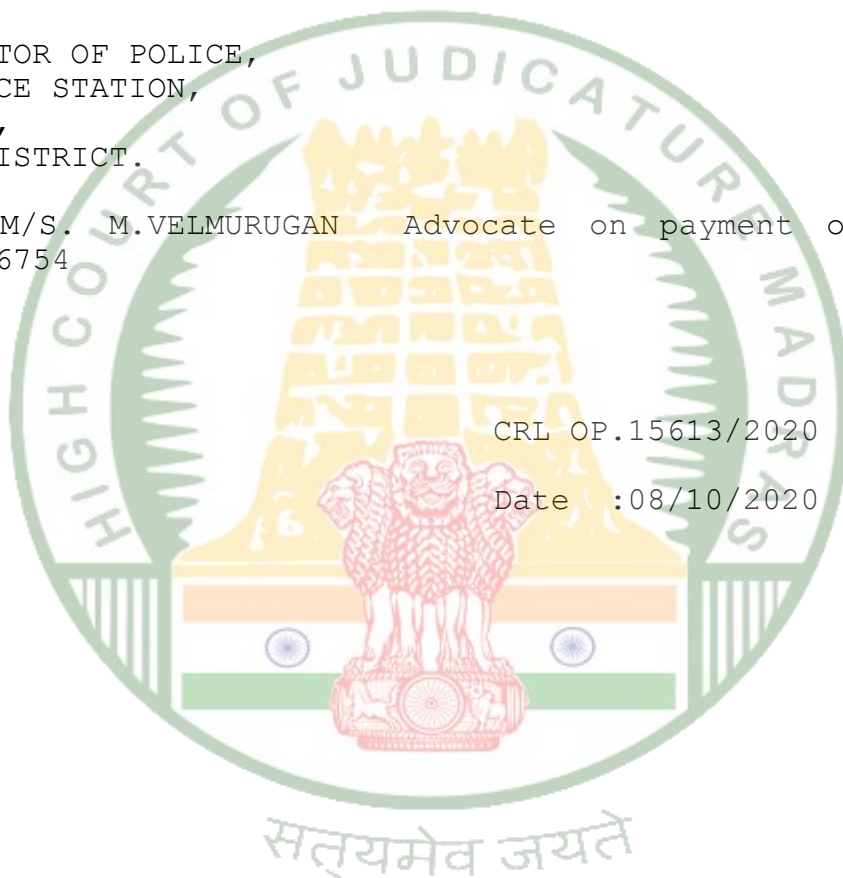
4 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
UDHAGAMANDALAM,
THE NILGIRIS DISTRICT.

+1 CC to M/S. M.VELMURUGAN Advocate on payment of necessary
charges SR.No.6754

cs 09/10/2020

CRL OP.15613/2020

Date :08/10/2020



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