

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.11.2020

CORAM :

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

CRL.O.P.Nos.16014 & 16010 of 2020

S.Sivakumar

... Petitioner in both Crl.O.Ps.

Vs.

State rep.by

Inspector of Police,

Peralam Police Station,

Thiruvavarur District.

(Crime Nos.72 & 522 of 2019)

... Respondent in both Crl.O.Ps.

PRAYER in Crl.O.P.No.16014/2020: Criminal Original Petition filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail, in Spl.S.C.No.18/2019 pending on the file of the Additional Sessions Judge, Fast Track Mahila Court, Thiruvavarur.

PRAYER in Crl.O.P.No.16010/2020: Criminal Original Petition filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail, in Spl.S.C.No.33 of 2020 pending on the file of the Additional Sessions Judge, Fast Track Mahila Court, Thiruvavarur.

For Petitioner : Mr.P.Muthamizh Selvakumar in both Crl.O.Ps.

For Respondent : Mr.T.Shunmugarajeswaran
Government Advocate (Crl. Side)

C O M M O N O R D E R

(These cases have been heard through video conference)

The petitioner in Crl.O.P.No.16014 of 2020, was arrested and remanded to judicial custody on 05.08.2020 for the offences punishable under Section 365, 366 and 376 of IPC and Section 5(L), 6 of Protection of Children from Sexual Harassment Act, 2012 and Section 9 of Child Marriage Act, 2006 in Crime No.72 of 2019 on the file of the respondent police, seeks bail.

2.The petitioner in Crl.O.P.No.16010 of 2020, was arrested and remanded to judicial custody on 25.06.2020 for the offences punishable under Section 366 of IPC and Section 5(L), (j) (ii), 6 of Protection of Children from Sexual Harassment Act, 2012 in Crime No.522 of 2019 on the file of the respondent police, seeks bail.

3.There are two cases, one is registered in Crime No.72 of 2019 and another one is registered in Crime No.522 of 2019 by the very same respondent in respect of the very same petitioner.

4.The case of the prosecution as per the defacto complainant viz. Lenin in Crime No.72 of 2019 is that the petitioner had kidnapped his minor daughter and performed child marriage and also committed penetrative sexual assault on her. The further allegation is that the victim was secured and the petitioner was granted bail by the Additional Sessions Judge, Fast Track Mahila Court, Thiruvavarur. Thereafter, the respondent also completed investigation and filed a final report and the case was taken for trial in Spl.S.C.No.18 of 2019 by the learned Sessions Judge, Fast Track Mahila Court, Thiruvavarur. During the trial all the witnesses were examined and while the case was pending for examination of Investigating Officer, the petitioner once again on 01.10.2019 kidnapped the very same minor victim girl who is the daughter of the defacto complainant. Thereby, on the second complaint was given by one Manjula W/o.Lenin viz. the mother of the victim girl and a case was registered in Crime No.522 of 2019 for the offences punishable under Section 366 of IPC and Section 5(L), (j) (ii), 6 of Protection of Children from Sexual Harassment Act, 2012. Hence, the Trial Court had issued an Non Bailable Warrant (NBW) as against the petitioner on 19.10.2019, whileso, and the petitioner was secured on 25.06.2020 and remanded in the 2nd case in Crime No.522 of 2019 and he is in custody for more than four months. During Judicial custody, the petitioner remanded in Spl.S.C.No.18/2019 pursuant to the NBW dated 19.10.2019.

5.The learned counsel appearing for the petitioner would submit that the petitioner and the victim girl are neighbours and known to each other for a long time and there was also a love affair between them. Since the parents of the victim girl arranged for a marriage against her wishes, she eloped from the house and joined the petitioner. After coming to know about the registration of a case in Crime No.72 of 2019, the petitioner along with the victim girl surrendered before the respondent police. The petitioner was arrested and later released on bail. He would further submit that the prosecution after completion of investigation, filed a final report and the same was taken on file in Spl.S..C.No.18 of 2019. While the trial was pending, the parents of the victim girl once again arranged for a marriage of the victim girl with someone else, thereby, the victim girl, once again eloped from her parents' house and joined the petitioner. Both the petitioner and the victim without understanding the consequences and rigors of the POCSO Act, once again eloped and they were living as husband and wife in Erode. While they were living as husband and wife, the victim also became pregnant. He would further submit that the respondent police searched for them and they have secured the petitioner along with the victim girl at Erode and they were brought back to their native place and the petitioner was remanded in the second case in Crime No.522 of 2019.

6.The learned counsel would further submit that the victim has now attained majority and she has also delivered a child and compromise talks were effected between the parents of the petitioner and the parents of the victim girl. The victim has attained majority on 12.10.2020 and both families have decided to arrange for a marriage of the victim and the petitioner. He would further submit that the petitioner is in custody for more than 125 days and the

victim girl has also filed an affidavit stating that she was having love affair with the petitioner and since it was objected by the parents, she on her own volition eloped from her house with the petitioner and lived as husband and wife. She has further stated that she is pregnant and the parents of both the families are taking steps to conduct marriage between them. She has further stated that the presence of her husband is required to be there at the time of delivery. He would submit that as on date the girl has delivered a child.

7.The learned counsel would further submit that the petitioner has also filed an affidavit from Jail, wherein, he had stated that he is ready to marry the girl and arrangements are taken by both the families.

8.The learned Government Advocate (Crl.Side) appearing for the respondent would vehemently oppose stating that the petitioner on the earlier occasion during January 2019, kidnapped the victim minor girl and performed child marriage with her and committed penetrative sexual assault on her. The petitioner along with the victim girl was secured by the respondent police and the petitioner was granted bail in that case. Thereafter, final report has been filed and the case was taken up in Spl.S.C.No.18 of 2019 and most of the witnesses were examined and the case was pending at the stage of examination of the Investigating Officer. At that stage, the petitioner has once again kidnapped the victim girl, in respect to which, a case in Crime No.522 of 2019 has been registered. He would further submit that the final report in respect to Crime No.522 of 2019 has also been filed before the learned Additional Session Judge, Fast Track Mahila Court, Thiruvavarur and taken on file in Spl.S.C.No.33 of 2020 and the trial is yet to be commenced. He would further on instructions submit that the victim has now delivered a child. He would further state that both of them are belonging to the same community and steps are being taken by both the families to conduct formal marriage between the victim and the petitioner. He would further submit that the victim has attained majority on 12.10.2020.

9.Heard the learned Counsel on either side in both the Criminal Original Petitions. Perused the affidavits filed by the victim as well as the petitioner and also the other materials placed on record.

10.Taking into consideration of the facts and submissions made by the learned counsels and also taking into consideration of the affidavits filed by the petitioner as well as the victim girl 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 (out of which one surety should be the father of the victim girl and another one surety should be the father of the petitioner or mother of the petitioner) each for a like sum to the satisfaction of the The Additional Sessions Judge, Fast

Track Mahila Court, Thiruvavarur, 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 appear before the learned Additional Session Judge, Fast Track Mahila Court, Thiruvavarur at 10.30 a.m. on all working days, 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.

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

-sd/-

05/11/2020

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 SESSIONS JUDGE,
FAST TRACK MAHILA COURT, THIRUVARUR

2 THE OFFICER INCHARGE,
SUB JAIL, MANARGUDI,
THIRUVARUR DISTRICT.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 INSPECTOR OF POLICE,
PERALAM POLICE STATION,
THIRUVARUR DISTRICT.

5 THE SUPERINTENDENT,
PUDUKOTTAI PRISON.

CC to M/S.P.MUTHAMIZH SELVAKUMAR Advocate on payment of
necessary charges

CRL.O.P.Nos.16014 & 16010 of 2020

Date :05/11/2020

RVR 06/11/2020



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