

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.10.2020

CORAM :

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

CRL.O.P.No.16073 of 2020

Sivalingam

... Petitioner

Vs.

State by,

Inspector of Police,
Thanipadi Police Station,
Tiruvannamalai District.
(Crime No.2154 / 2020)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail pending investigation in Crime No.2154 of 2020 on the file of the Inspector of Police, Thanipadi Police Station, Tiruvannamalai District.

For Petitioner : Mr.V.Prakashbabu

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 16.09.2020 for the offence punishable under Sections 366(A) IPC and Sec 3(a), 4, 5, (1), 6 of the POCSO ACT and Sec 9 of Child Marriage Act, in Crime No.2154 of 2020, on the file of the respondent police, seeks bail.

2.The case of the prosecution as per the defacto complainant Ramesh is that on 07.07.2020, his minor daughter was found missing and based on the complaint of the defacto complainant, the case was originally registered under the caption "Girl Missing". Thereafter, during the course of investigation, it was found that the petitioner had kidnapped the daughter of the defacto complainant and performed child marriage with her and also committed penetrative sexual assault on her. Thereby, the case was altered into Sections 366(A) IPC and Sec 3(a), 4, 5, (1), 6 of the POCSO ACT and Sec 9 of Child Marriage Act.

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 petitioner and the victim are neighbors and that they are known to each other. In fact the defacto complainant had arranged for

marriage of the victim against her will and thereby, she ran away from her house and the defacto complainant on suspicion, has given a false complaint against the petitioner as if, he kidnapped and married his minor daughter. He would submit that the petitioner understands that the victim has been subjected to medical examination and she has been examined under Section 164 Cr.P.C. wherein she has stated that only on fear that her father would give her into marriage against her wish, she tied Thali on her own and other than that there is absolutely no allegation against the petitioner. He would further submit that the petitioner has been suffering incarceration from 16.09.2020 and prays for grant of bail.

4.The learned Government Advocate (Crl. Side) appearing for the respondent police would vehemently oppose stating that the petitioner being a neighbor of the victim girl, had kidnapped her and performed child marriage and also committed penetrative sexual assault on her. He would further submit that the victim girl was examined under Section 164 Cr.P.C. However, her statement has not supported the case of the prosecution.

5. Heard both sides. Perused the records including the statement of the victim girl recorded under Section 164 Cr.P.C.

6.Taking into consideration the facts and circumstances of the case and the submissions made by the learned counsels and the fact that the statement of the victim girl has not supported the prosecution case and also considering the period of incarceration suffered by the petitioner from 16.09.2020, 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 Special Court for Trial of Cases under POCSO ACT at Tiruvannamalai, 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.

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

-sd/-

29/10/2020

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 SPECIAL COURT FOR TRIAL OF
CASES UNDER POCSO ACT, TIRUVANNAMALAI.

2 THE OFFIER INCHARGE,
SUB JAIL, TIRUVANNAMALAI.

3 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
THANIPADI POLICE STATION,
TIRUVANNAMALAI DISTRICT

CC to M/S.V.PRAKASHBABU Advocate on payment of necessary charges

CRL OP.16073/2020

Date :29/10/2020

MK:02/11/2020