

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.10.2020

CORAM :

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

CRL.O.P.No.16287 of 2020

K.Francis

... Petitioner

Vs.

The State of Tamil Nadu,
Rep. by the Inspector of Police,
Karipatty Police Station,
Salem District.
(Crime No.360 of 2020)

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in Crime No.360 of 2020 on the file of the respondent police.

For Petitioner : Mr.C.K.M.Appaji

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

ORDER

(The cases have been heard through video conference)

The petitioner, who was arrested and remanded to judicial custody on 21.06.2020 for the offences punishable under Sections 5 (n), 5 (m) r/w 6 of POCSO Act, 2012, in Crime No.360 of 2020 on the file of the respondent police, seeks bail.

2.The case of the prosecution as per the defacto complainant viz. Kavitha, the mother of the victim girl is that the petitioner had committed aggravated sexual assault on her minor daughter.

3.The learned counsel appearing for the petitioner would submit that the petitioner is innocent and he has been falsely implicated in this case due to enmity in the family. He would further submit that the defacto complainant is the sister in law of the petitioner and that there was a family dispute with regard to sharing of property, thereby, a false complaint has been given against him. He would further submit that the medical opinion also does not suggest penetrative sexual assault. He would further submit that the investigation has been completed.

4.The learned Government Advocate (Crl.Side) appearing for the respondent would vehemently oppose stating that the petitioner is the uncle of the victim girl and that he had committed aggravated sexual assault on the victim girl. He would further submit that the investigation has been completed and charge sheet has also been filed and taken up in Spl.S.C.No.60 of 2020, on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Salem, and there are totally 21 witnesses in this case.

5.At this juncture, the learned counsel for the petitioner would submit that the petitioner is prepared to abide by any stringent conditions that to be imposed by this Court and he is also prepared to stay away till the examination of the victim girl is completed by the prosecution.

6.Heard the learned Counsel on either side. Perused F.I.R. and other materials placed on record.

7.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, Salem, 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 stay at Namakkal and report before the Namakkal Town Police Station on every Monday at 10.30 a.m. until further orders. The petitioner shall not enter into the jurisdictional limits of the respondent police and he shall not have any contact with the family of the victim till the examination of the victim is completed by the Trial Court.

(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.

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

-sd/-
28/10/2020

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, SALEM.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM

4 THE INSPECTOR OF POLICE,
KARIPATTY POLICE STATION,
SALEM DISTRICT.

5 THE OFFICER INCHARGE,
NAMAKKAL TOWN POLICE STATION,
NAMAKKAL.

+1 CC to M/S. C.K.M.APPAJI Advocate on payment of necessary charges SR.NO.7088

CRL OP.16287/2020

Date :28/10/2020

TA-29/10/2020