

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.11.2020

CORAM :

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

CRL.O.P.No.17120 of 2020

Solairajan

... Petitioner

Vs.

The State Represented by
The Inspector of Police,
D-1, Ramanathapuram Police Station,
Coimbatore.
(Crime No.1635 of 2020)

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in connection with Crime No.1635 of 2020 on the file of the respondent.

For Petitioner : Mr.T.Senthilvelmurugan

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 26.08.2020 for the offences punishable under Sections 366, 376 IPC & 5(1) r/w 6 of POCSO Act 2012, in Crime No.1635 of 2020 on the file of the respondent police, seeks bail.

2.The case of the prosecution as per the defacto complainant viz. Mahalakshmi is that her minor daughter who has studied 10th std and was staying at home had informed her that she is in love with the petitioner and that he had purchased phone for her. The defacto complainant had reprimanded her and broken the cell phone. While so, on 21.08.2020 her daughter was found missing, suspecting that the petitioner would have kidnapped her, she gave a complaint to the respondent police and based on the complaint, a case was registered under Section "girl missing" and later during the course of investigation, the fact came to light that the petitioner had kidnapped the minor daughter of the defacto complainant and repeatedly committed penetrative sexual assault on her.

3.The learned counsel appearing for the petitioner would submit that the petitioner is innocent and he has been falsely implicated in this case. He would further submit that the petitioner was having friendship with the victim girl and when the same came to the knowledge of her parents, they have against her wishes arranged marriage with another person, thereby, the victim girl had eloped from her house and came to the house of the petitioner and stayed with him in his house and when the petitioner and the victim came to know about the registration of the case, the petitioner surrendered before the respondent police along with the victim girl and the petitioner was remanded to judicial custody. He would further submit that the petitioner is a painter by profession and not educated and hence without understanding the consequences and rigors of POCSO Act, had taken the victim girl along with him. He would further submit that the medical examination in respect of the petitioner and the victim girl is over. He would further submit that the petitioner understands from the statement recorded from the victim girl under Section 164 Cr.P.C. that she had stated that she accompanied the petitioner on her own accord and that she was not forcibly kidnapped by the petitioner. He would further submit that the petitioner was arrested on 26.08.2020 and the petitioner is in judicial custody for more than 60 days.

4.The learned Government Advocate (Crl.Side) appearing for the respondent would vehemently oppose stating that the petitioner had kidnapped the minor daughter of the defacto complainant aged about 16 years and had repeatedly committed penetrative sexual assault on her. He would further submit that the investigation is pending. He would further submit that the medical examination in respect of the petitioner and the victim girl is over and the statement under Section 164 Cr.P.C. has also been recorded from the victim girl.

5.Heard the learned Counsel on either side. Perused the F.I.R., statement recorded from the victim girl under Section 164 Cr.P.C and other materials placed on record.

6.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 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 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/-
02/11/2020

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 SPECIAL COURT FOR EXCLUSIVE TRIAL OF
CASES UNDER POCSO ACT, COIMBATORE.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
D-1, RAMANATHAPURAM POLICE STATION,
COIMBATORE.

4 THE SUPERINTENDENT,
CENTRAL PRISON COIMBATORE.

CC to M/S. T.SENTHILVELMURUGAN Advocate on payment of
necessary charges

CRL OP.17120/2020

Date :02/11/2020

TA-03/11/2020



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