

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.11.2020

CORAM :

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

CRL.O.P.No.17636 of 2020

S.T.VIGNESH

... Petitioner

Vs.

State Rep by,
Inspector of Police,
D-3, Police Station, Podanur,
Coimbatore District.
(Crime No.1437 of 2020)

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in connection with the Crime No.1437 of 2020 on the file of the respondent, D-3 Police Station, Podanur, Coimbatore District.

For Petitioner : Mr.P.Kalimuthu

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

O R D E R

(The cases have been heard through video conference)

The petitioner, who was arrested and remanded to judicial custody on 10.09.2020 for the offence punishable under Section 366 of Indian Penal Code and under Section 7 read with Section 8 of The Protection of Children from Sexual Offences Act, 2012 and under Section 9 of Prohibition of Child Marriage Act, in Crime No.1437 of 2020 on the file of the respondent police, seeks bail.

2.The case of the prosecution as per the defacto complainant viz., Selvi is that her daughter viz., Divya aged about 18 years was found missing. Based on the complaint, a case was registered under the caption "Girl Missing". Later, during the course of the investigation, it came to light that the victim girl was 17 years old and that the petitioner had kidnapped her, performed child marriage with her and later intimidated her not to inform the same to anybody.

3.The leaned 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 girl are known to each other and they were in love with each other and after coming to know of their relationship, the parents of the victim girl have taken steps to get her married with someone else against her wish. Thereby, the victim girl eloped from her house and got married with the petitioner in a small temple. Thereafter,

coming to know of the registration of the case, the petitioner and the victim have surrendered before the respondent police station and they were separated and the police has stated that the victim girl has not attained majority. He would submit that the medical examination in respect of the victim girl as well as the petitioner has been completed and the statement of the victim girl has also been recorded under Section 164 of Cr.P.C. He would submit that there is no allegation as if the petitioner had committed any sexual assault on the victim girl. He would further submit that since the petitioner and the victim belong to two different communities, the parents of the victim girl are antagonized with the petitioner. Hence, he prays to grant bail to the petitioner.

4.The learned Government Advocate (Crl.Side) appearing for the respondent would submit that the petitioner had kidnapped the minor daughter of the defacto complainant, performed child marriage with her and also committed penetrative sexual assault on the victim girl. However, he would submit that the statement has been recorded from the victim girl under Section 164 of Cr.P.C, wherein, she had not made any allegation against the petitioner for having committed sexual assault on her.

5.Heard both the learned counsels and perused the materials placed on record including statement recorded from the victim girl under Section 164 Cr.P.C.

6.Taking into consideration the facts and submissions made by the learned counsels, considering the statement recorded from the victim girl under Section 164 Cr.P.C. and also considering the fact that the petitioner is in judicial custody from 10.09.2020, 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 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 shall stay at Palani and report before Palani Town Police Station everyday at 10.30 a.m., for a period of two weeks and thereafter every Monday at 10.30 a.m., until further orders. The petitioner shall not enter into the jurisdictional limits of the respondent police station.

(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;

(h) 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];

(i) if the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

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

-sd/-

18/11/2020

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 INSPECTOR OF POLICE,
D-3 POLICE STATION, PODANUR, COIMBATORE DISTRICT

4 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

5 THE OFFICER INCHARGE,
PALANI TOWN POLICE STATION,
PALANI

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

CRL OP.17636/2020

Date :18/11/2020

RVR 19/11/2020