

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.17229 of 2020

Vijaya Kumar

... Petitioner

Vs.

State rep by
Inspector of Police,
Anti Trafficking Cell,
CBCID Head quarters,
Egmore, Chennai 08
(Crime No.3 of 2020)

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in Crime No.3 of 2020 pending investigation on the file of the respondent Police.

For Petitioner : Mr.RM.Muthukumar

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 03.09.2020 for the offence punishable under Sections 5(i), 5(j)(ii) and 6 of POCSO Act, 2012 and 307 IPC and 3(1) & 4(1) of Immoral Traffic (Prevention) Act, 1956, in Crime No.3 of 2020 on the file of the respondent police, seeks bail.

2.The case of the prosecution as per the defacto complainant viz., Soundharya is that the victim minor girl xxx aged 17 years was subjected to repetitive penetrative sexual assault by several persons. Originally a case was registered by Railway Police, Mettupalayam and thereafter, the case was transferred to the file of the respondent police. The petitioner is arrayed as A7 in this case and he was arrested on 03.09.2020.

3.The learned counsel appearing for the petitioner would submit that the petitioner is an innocent person and he has been falsely implicated in this case. He would submit that though the case is stated to be a case of gang rape, the petitioner is not one of the accused who had indulged in the gang rape of the victim. He would submit that the respondent police had recorded the statement from the victim girl, where, she alleged to have stated that the petitioner and the victim were neighbours and that there was a love affair between them and during such time, the victim and the petitioner had

sexual intercourse. He would submit that subsequently, the statement of the victim was recorded under Section 164 of Cr.P.C by the learned Additional Mahila Judge, Coimbatore and in that statement, the victim has not stated anything against the petitioner. He would submit that the petitioner was arrested on 03.09.2020 and that he is in custody for the past 75 days. He would submit that there is no allegation of forcible rape or subjecting the victim to gang rape and that the main accused in this case have been granted statutory bail. He would further submit that the petitioner is working as Assistant Engineer in reputed Two Wheeler Manufacturing Company. Hence, he prays to grant bail to the petitioner.

4.The learned Government Advocate (Crl.Side) appearing for the respondent would oppose that the petitioner is the neighbour of the victim girl and that during the course of the investigation, the victim girl had informed that the petitioner was friendly with her and that they had sexual intercourse. He would further submit that the victim had left her home and gone to Ooty and during such time, she was subjected to penetrative sexual assault by the other accused. However, he would submit that the statement under Section 164 of Cr.P.C has been recorded from the victim girl, where, she had not spoken anything about the petitioner.

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

6.Taking into consideration of the facts and submissions made by the learned counsels, considering the statement under Section 164 Cr.P.C recorded from the victim girl and the petitioner is in judicial custody from 03.09.2020, 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 Metropolitan Magistrate No-14, Egmore, Chennai 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 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;

(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 NO.14 METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI

2 THE CHIEF METROPOLITAN
MAGISTRATE,EGMORE, CHENNAI (FOR INFORMATION)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 INSPECTOR OF POLICE,
ANTIC TRAFFICKING CELL,
CBCID HEAD QUARTERS, EGMORE,
CHENNAI 08

5 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL,
CHENNAI

CC to M/S.RM.MUTHUKUMAR Advocate on payment of necessary
charges Sr.7599

CRL OP.17229/2020

Date :18/11/2020

RVR 19/11/2020