

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.12.2020

CORAM :

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

CRL.O.P.No.18777 of 2020

Dhanapal

... Petitioner

Vs.

State Represented by its
The Inspector of Police,
Kondalampatty Police Station,
Salem City.
(Crime No.213 of 2020)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in Crime No.213 of 2020 on the file of the respondent police.

For Petitioner : Mr.M.Senthil Kumar

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

ORDER

(The case has been heard through video conference)

The petitioner, who was arrested and remanded to judicial custody on 01.04.2020 for the offences punishable under Section 5(m) r/w 6 of POCSO Act, 2012 and Section 506(i) of IPC in Crime No.213 of 2020 on the file of the respondent police, seeks bail.

2. The case of the prosecution as per the *de facto* complainant Jaya is that the petitioner committed penetrative 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. He would submit that the petitioner and the *de facto* complainant are neighbors and since there was previous enmity between the family members, a false complaint has been given against the petitioner. He would further submit that the statement under Section 164 Cr.P.C has been recorded from the victim girl and she has not stated as if that there was any penetrative sexual assault. He would submit that the victim girl was subjected to medical examination on the same day of complaint and medical evidence does not support the case of the prosecution. He would

submit that the investigation has been completed and the case has been taken up for trial and the petitioner has to engage a counsel to defend his case and hence, he prays to grant bail to the petitioner.

4. The learned Government Advocate (Crl.Side) appearing for the respondent would vehemently oppose stating that the petitioner, four days prior to the date of complaint, committed sexual assault on the minor daughter of the *de facto* complainant. He would submit that the investigation has been completed and the case has been taken up for trial in Spl.S.C.No.20 of 2020 on the file of the Special Court Exclusive trial of Cases under POCSO Act, Salem.

5. Heard the learned counsel on either side and perused the entire materials available on record.

6. Taking into consideration the facts and circumstances of the case and the submissions of the learned Counsels and also considering 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 Special Court 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 shall appear before the Trial Court on all hearing dates without fail;

(d) The petitioner shall stay at Athur (Salem District) and report before the Athur Police Station every day at 5.30.p.m. until further orders;

(e) the petitioner shall not enter into the limits of Kondalampatty Police Station until the examination of the witnesses are over;

(f) the petitioner shall not commit any offences of similar nature;

(g) the petitioner shall not abscond either during investigation or trial;

(h) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(i) 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]**;

(j) 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/-

09/12/2020

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 JUDGE, SPECIAL COURT EXCLUSIVE
TRIAL OF CASES UNDER POCSO ACT,
SALEM.

2 THE INSPECTOR OF POLICE,
KONDALAMPATTY POLICE STATION,
SALEM DISTRICT.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

+1 CC to M/S.M.SENTHIL KUMAR Advocate on payment of necessary
charges SR.No 8061

CRL OP.18777/2020

Date :09/12/2020

MN-10/12/2020

<https://hcservices.ecourts.gov.in/hcservices/>