

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.11.2020

PRONOUNCED ON : 03.12.2020

CORAM

THE HONOURABLE MR.JUSTICE. M.NIRMAL KUMAR

CrI.O.P.No.17365 of 2020

Paramanathan

... Petitioner

Vs.

State Represented by
The Inspector of Police,
All Women Police Station,
Namakkal District.
Crime No.17 of 2020.

... Respondent

Prayer: Criminal Original Petition filed under Section 439 Cr.P.C, to enlarge the petitioner on bail pending investigation in Crime No.17 of 2020 on the file of the respondent police.

For Petitioner : Mr.Rahamath Ali
for Mr.H.Rajasekar

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

ORDER

This case has been heard through video conference

The petitioner who was arrested and remanded to judicial custody on 08.09.2020 for the offence punishable under Sections 6 r/w 5(n) of POCSO Act and 506(i) of IPC, in Crime No.17 of 2020 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the victim is the daughter of one Selvi, who was deserted by her husband/Pandian. Thereafter, the victim's mother married the petitioner herein, living with him happily and the petitioner was taking care of the educational needs of the victim and her sibling. On 08.09.2020, the victim had gone along with her aunt and an Advocate Clerk to the respondent Police and lodged a complaint stating that the petitioner, who is a foster father, had committed sexual assault on her, who is aged about 14 years living with the petitioner along with her mother. Her mother was working as a coolie and the victim was studying X standard in Government Higher Secondary School. On

03.05.2019 at about 8.00 p.m., the petitioner had brought cool drinks and given to the victim and her mother. Thereafter, the victim's mother had gone to sleep, at that time, the petitioner woke up and hugged the victim and kissed her. Due to which, the victim shouted and woke up her mother, thereafter, the victim's mother picked up quarrel with the petitioner. Four months later, on 17.07.2020, when the victim's mother had gone to work, the victim was sleeping alone in her house, at that time, the petitioner had come to the house of the victim and committed sexual assault on her, threatened her that if she discloses this fact to any one, she and her mother would be done to death. Hence, she did not disclose the fact immediately. The petitioner regularly came home in a drunken mood and used to pick up quarrel with the victim's mother. Unable to bear the torture, on 29.08.2020, the victim's mother attempted to commit suicide by consuming poison, thereafter, she was taken to the hospital and saved. Hence, the victim girl had gone to her maternal grand mother's house, where, she disclosed the fact about the petitioner committing sexual assault on her. The aunt of the petitioner had brought her to the Advocate Clerk and on his advise, she lodged a complaint.

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 further submit that for the past 13 years, the petitioner was taking care of the victim and her brother and mother. He would submit that the petitioner was continuing his relationship with the first wife which was objected by the victim and others, due to which, a false complaint has been given. Further, the victim's maternal grand mother and aunt did not approve the petitioner's relationship with the victim's mother. Taking advantage of the misunderstanding between the petitioner and the victim's mother, the victim had been tutored by her aunt and maternal grand mother and on the advise of the Advocate Clerk, a false complaint has been lodged against the petitioner. Hence, he prays for grant of bail to the petitioner.

4. The learned Government Advocate (Crl.Side) would submit that in this case, the petitioner was arrested on 08.09.2020. He would further submit that the allegation against the petitioner is that the defacto complainant, who is aged about 14 years, was sexually assaulted by the petitioner on several occasions. Further, the petitioner had threatened her not to disclose to any one about the sexual assault committed by the petitioner and the petitioner has been continuously carrying out sexual assault on the victim. He would further submit that the victim's mother, on coming to know about the same, had attempted to commit suicide by consuming poison and thereafter, she was taken to the hospital and saved. He would submit that the victim, who is a school going child, had clearly deposed that the petitioner had committed sexual assault on her frequently. He would further submit that the petitioner and the victim girl were sent for medical examination and the medical report also confirms the same. Hence, he opposed for grant of bail to the petitioner.

5. This Court had perused the 164 statement and the medical examination report, in which, she admits that on the advise of her aunt and the Advocate Clerk, she had lodged a complaint. It is admitted that the petitioner had taken care of the victim and her mother and brother and provided them with food, shelter and Educational needs, for the past 13 years. There are variations and improvement in the statement of the victim.

6. Taking into consideration the nature of allegations against the petitioner in the FIR and also taking note of the fact that the petitioner is in judicial custody from 08.09.2020, this Court is inclined to grant bail to the petitioner, subject to the following conditions:

(a) the petitioner is ordered to be released on bail and he shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each, with two sureties before learned Sessions Judge (Fast Track) Mahila Court, Namakkal.

(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 the respondent police daily at 10.30 a.m., for a period of two weeks and thereafter as and when required.

(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/-

03/12/2020

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 SESSIONS JUDGE (FAST TRACK) MAHILA COURT,
NAMAKKAL.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
NAMAKKAL, NAMAKKAL DISTRICT.

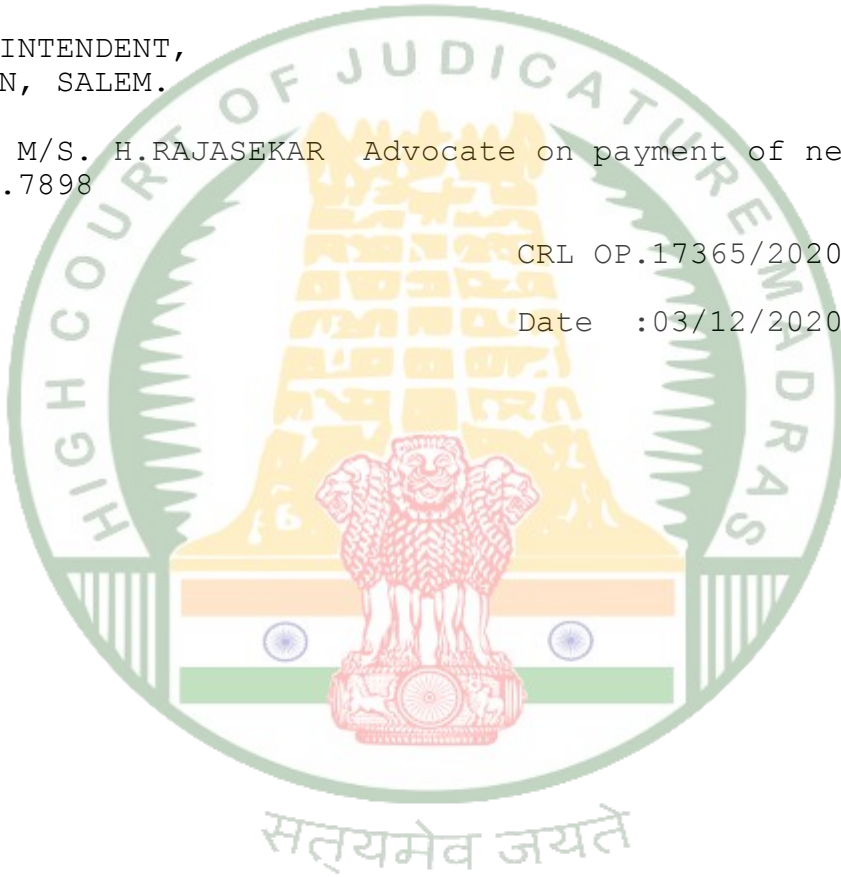
4 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

+1 CC to M/S. H.RAJASEKAR Advocate on payment of necessary
charges SR.NO.7898

CRL OP.17365/2020

Date :03/12/2020

TA-04/12/2020



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