

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2020

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No. 17669 of 2020

1.Sakthivel

2.Ayyappan

... Petitioners/Accused Nos.1 & 2

Vs.

The State represented by,
The Inspector of Police,
Kadaladi Police Station,
Kadaladi, Tiruvannamalai District. ... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 439 Cr.P.C. to enlarge the petitioners on bail in Crime No. 2708 of 2020, on the file of the respondent police.

For Petitioners : Mr.B.Jawahar

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

O R D E R

(The case has been heard through video conference)

The petitioners who were arrested and remanded to judicial custody on 05.10.2020 for the offences punishable for Girl Missing later altered to one Sections 363, 366, 376(2)(n) of IPC and Section 5(L), 6 of POCSO Act, 2012 in Crime No.2708 of 2020 on the file of the respondent police, seek bail.

2.The case of the prosecution as per the defacto complainant is that his minor daughter viz., Sandhiya, aged 15 years was found missing and based on the complaint given by him originally a case was registered under the caption "Girl Missing". Later, during the course of the investigation, it came to light that one Sasikumar, who is a Juvenile from the village, had kidnapped the victim girl and committed penetrative sexual assault on her. Thereby, the case was altered to one under Sections 363, 366, 376(2)(n) of IPC and Section 5(L), 6 of POCSO Act, 2012 and the said Sasikumar was arrested and the petitioners were also arrested for having assisted the said Sasikumar in the offence.

3.The learned counsel appearing for the petitioners would submit that the petitioners are innocent and a false case has been foisted against them. He would submit that the victim and the main accused viz., Sasikumar are belonging to the same village and that they were in love with each other and they eloped from their home without knowledge of both of their parents. Since, the request made by the

father of the accused to secure both the victim and the main accused, the petitioners have searched for them and they caught hold of them. Thereafter, when the petitioners were bringing the victim and the main accused back to their village, they were intercepted by the police and the main accused has absconded from the car and the petitioners were arrested at the scene of occurrence. He would further submit that the victim was secured, Medical Examination was conducted and the statement under Section 164 Cr.P.C has also been recorded and thereafter, the petitioners understand that the victim has not stated anything against them as if they have committed sexual assault on her. He would further submit that even no averment of sexual assault has been made against the main accused and that the main accused has been enlarged on bail by the Juvenile Court. He would submit that the petitioners have been suffering incarceration from 05.10.2020. Hence, he prays to grant bail to the petitioner.

4.The learned Government Advocate (Crl.Side) appearing for the respondent would vehemently oppose by stating that the petitioners are relatives of the main accused viz., Sasikumar and they have assisted the main accused in kidnapping the victim girl and that the main accused had taken the victim girl and had committed sexual assault on her. He would submit that as per the Statement recorded from the victim girl under Section 164 Cr.P.C, she has not stated anything as if she was sexually assaulted by the main accused.

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

6.Taking into consideration of the facts and submissions made by the learned counsels and the petitioners are in judicial custody from 05.10.2020 and also considering the statement recorded from the victim girl under Section 164 Cr.P.C., this Court is inclined to grant bail to the petitioners subject to the following conditions:

(a) Accordingly, the petitioners are 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, Tiruvannamalai 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 petitioners shall report before respondent police everyday at 10.30 a.m., until further orders.

(d) the petitioners shall not commit any offences of similar nature;

(e) the petitioners shall not abscond either during investigation or trial;

(f) the petitioners 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 petitioners in accordance with law as if the conditions have been imposed and the petitioners 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 abscond, a fresh FIR can be registered under Section 229A IPC.

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

-sd/-

20/11/2020

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,
TIRUVANNAMALAI

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

4 INSPECTOR OF POLICE,
KADALADI POLICE STATION KADALADI,
TIRUVANNAMALAI DISTRICT

CC to M/S. B.JAWAHAR Advocate on payment of necessary charges
Sr.7727

CRL OP.17669/2020

Date :20/11/2020

RVR 01/12/2020