

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.17589 of 2020

Suresh

... Petitioner

Vs.

The State rep.by

The Station House Officer,
PORTNOVA Police Station,
Cuddalore District.

(Crime No.825 of 2020)

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in Crime No.825 of 2020 pending on the file of the respondent police.

For Petitioner : Mr.R.Thirumoorthy

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 07.10.2020 for the offence punishable under Sections 366 of IPC R/w Section 5(1) and 6 of POCSO Act 2012 and 9 of Children Marriage restraint Act 2006, in Crime No.825 of 2020 on the file of the respondent police, seeks bail.

2.The case of the prosecution as per the defacto complainant viz., Priya is that the petitioner had kidnapped her minor daughter, performed child marriage and also committed penetrative sexual assault on her minor daughter. Hence, the 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 submit that the petitioner and the victim girl, who was born on 05.11.2002, were in love with each other and on coming to know of their love affair, the family members of the victim girl were made arrangements to get her married with someone else, against her wishes and thereby, the victim girl eloped from the house. The

petitioner being a rustic villager, being not aware of the rigors and consequences of the POCSO Act, had married the victim girl. After coming to know of the registration of the case, the petitioner and the victim girl returned back to the village and the petitioner was arrested by the respondent police. He would submit that the victim girl was born on 05.11.2002 and as on date she has attained majority and now settlement talks are going between the family members of the petitioner and family members of the victim girl and that both the families have agreed to arrange for a formal marriage of the petitioner and victim girl. He would further submit that the medical examination in respect of the petitioner as well as the victim girl has been completed and that the statement under Section 164 Cr.P.C has been recorded from the victim girl, wherein, she had stated that on her own, she had gone along with the petitioner and they got married in a temple. He would further submit that the victim has now attained majority and that the victim and her mother have filed a joint affidavit stating that they are ready for getting a formal marriage between the petitioner and that they have no objection in grant of bail to the petitioner. He would submit that the petitioner has filed affidavit from jail by stating that he will marry the victim girl. Hence, he prays to grant bail to the petitioner.

4.The learned Government Advocate (Crl.Side) appearing for the respondent would oppose by stating that the petitioner had kidnapped the minor daughter of the defacto complainant, performed child marriage with the minor girl in a temple and thereafter, he had committed penetrative sexual assault on the victim girl. Further, he would submit that the victim girl was born on 05.11.2002 and as on date, she has attained majority.

5.Heard the learned counsel and perused the materials placed on record including statement recorded from the victim girl under Section 164 Cr.P.C and also the affidavit filed by the victim girl and her mother as well as the affidavit filed by the petitioner.

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, affidavit filed by the victim girl and her mother as well as the affidavit filed by the petitioner and considering the fact that the petitioner is in judicial custody from 07.10.2020, 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 Sessions Judge, Special Court for Exclusively Trial of Cases Under POCSO Act, Cuddalore. 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., for a period of two weeks and thereafter every Monday 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 THE SESSIONS JUDGE,
SPECIAL COURT FOR EXCLUSIVELY TRIAL OF CASES
UNDER POCSO ACT, CUDDALORE.

2 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

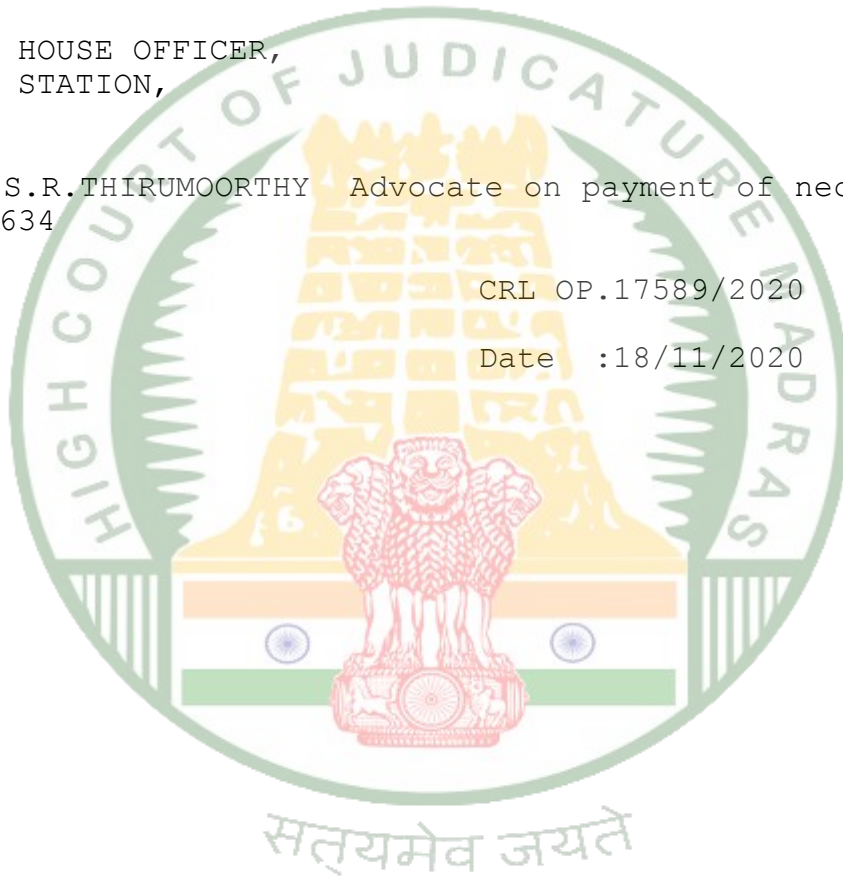
4 THE STATION HOUSE OFFICER,
PORTNOVA POLICE STATION,
CUDDALORE DIST.

+1CC to M/S.R.THIRUMOORTHY Advocate on payment of necessary
charges SR NO.7634

CRL OP.17589/2020

Date :18/11/2020

MK:19/11/2020



WEB COPY