

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2020

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CrI.O.P.No.17897 of 2020

Uthira

... Petitioner

Vs.

The State Represented by,
The Inspector of Police,
All Women Police Station,
Thiruvannamalai District.
(Cr.No.42 of 2018)

... Respondent

Prayer: Criminal Original Petition filed under Section 438 of Cr.P.C., to enlarge the petitioner on bail in the event of her arrest in Connection with the Crime No.42 of 2018 pending on the file of the respondent police.

For Petitioner : Mr.R.Balakrishnan

For Respondent : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

ORDER

(This case has been heard through video conference)

The petitioner who apprehends arrest at the hands of the respondent police for the alleged offences punishable under Section 294 (b) of IPC r/w. Sec 4 & 6 of POCSO Act 2012 and Section 9 & 10 of the Prohibition of Child Marriage Act 2006 @ 376 (1), 376 (2) (n) of IPC and Section 4, 6 r/w. 5 (1) of POCSO Act and Section 4 of Dowry Prohibition Act, in Crime No.42 of 2018, on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution as per the defacto complainant viz., Madubala is that her parents arranged marriage with one Kumaresan and she agreed for the marriage and got married to one Kumaresan. At that time of marriage, she was aged about 17 years. At that time, jewels and other household articles were given by the parents of the defacto complainant and subsequently, she wanted to continue education and to go to college and later, the said Kumaresan harassed and assaulted her in an inebriated condition. He had attempted to have sexual intercourse with her and subsequently he demanded dowry. Thereafter, she was driven out from matrimonial home. Hence, the complaint.

3. The learned counsel for the petitioner would submit

that the petitioner is an innocent person and she has been falsely

implicated in this case. He would further submit that the petitioner is the sister of A1. The parents of the defacto complainant stated that she was major at the time of marriage and therefore, they arranged for marriage and thereafter due to matrimonial dispute the defacto complainant had left the matrimonial home and given a complaint stating that she was a minor at the time of marriage and they demanded dowry. He would further submit that the petitioner's husband was working in abroad and she was also living in abroad and she had come only for his brother's marriage other than that she is no way connected in this case. He would further submit that the investigation has been completed and the final report has been filed before the Special Court for Exclusive trial of cases under POCSO Act in Spl.S.C.No.30 of 2020. He would further submit that she is ready to appear before the Court. Hence, he prays for grant of anticipatory bail to the petitioner.

4. The learned Additional Public Prosecutor would submit that the petitioner's brother married the defacto complainant. At that time the victim was a minor and the other accused harassed and abused her. Thereafter she was driven out from her matrimonial home. He would further submit that the investigation has also been completed and final report has been filed in Spl.S.C.No.30 of 2020 on the file of the Special Court for Exclusive trial of cases under POCSO Act. Hence, he vehemently opposed the grant of anticipatory bail to the petitioner.

5. Heard and perused the materials and the statement has been recorded from the victim under Section 164 Cr.P.C.

6. Taking into consideration the facts and submissions of the learned Counsel, this Court is inclined to grant anticipatory bail to the petitioner subject to the following conditions;

7. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on her appearance, within a period of fifteen (15) days from the date on which the copy of the order is made ready, before **the Special Judge for Exclusive trial of cases under POCSO Act, Tiruvannamalai**, on condition that the petitioner shall 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 respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[a] the petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] **the petitioner shall report before the Special Judge for Exclusive trial of cases under POCSO Act, Tiruvannamalai, every day at 10.30 a.m., for a period of two weeks and thereafter time to be fixed by the Special Court.**

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned 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]**.

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

8. 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 JUDGE FOR EXCLUSIVE TRIAL
OF CASES UNDER POCSO ACT, TIRUVANNAMALAI.

2 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
THIRUVANNAMALAI DISTRICT.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 CC to M/S.R.BALAKRISHNAN Advocate on payment of necessary charges SR.No 7752

CRL OP.17897/2020

Date :20/11/2020