

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.12.2020

PRONOUNCED ON : 09.12.2020

CORAM

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.17925 of 2020

Santhakumar @ Esa

... Petitioner

Vs.

State by:-

... Respondent

The Inspector of Police,
Oragadam Police Station,
Kancheepuram District.
(Crime No.1699 of 2020)

Prayer: Criminal Original Petition filed under Section 439 Cr.P.C. to enlarge the petitioner on bail in Crime No.1699 of 2020, pending on the file of the respondent police.

For Petitioner : Mr.S.Nambirajan

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 24.09.2020, for the offences punishable under Section **366 (a), 376(3), 506(1) IPC and 4, 6 of POCSO Act, 2012** in Crime No.1699 of 2020 on the file of the respondent police, seeks bail.

2. The gist of the case is that on 24.09.2020, the defacto complainant, who is the mother of the victim girl, had lodged a complaint to the respondent police stating that her husband's brother one Selvam had a son namely Santhakumar/the petitioner herein, they were residing nearby and on 05.05.2020, the petitioner had called the defacto complainant's daughter to collect water melon and cucumber in the field and believing his words, the victim girl had gone with him in his motor bike to the field, where, the victim was subjected to penetrative sexual assault by the petitioner. The victim girl unable to overcome the terms, fearing that if she revealed the fact, her education would be spoiled and also the reputation of her family would be spoiled. Further, it would lead to an adverse publicity against her, therefore, she kept quite and

she did not reveal the same to the defacto complainant . The victim is studying Class XI at Government Higher Secondary School, Mathur. Taking advantage of the victim keeping quite, the petitioner got emboldened, started harassing the petitioner. Unable to bear any further, she informed her mother about the happenings. Hence, the defacto complainant lodged a complaint and the case was registered against the petitioner.

3. The learned counsel 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 the petitioner and the defacto complainant are relatives and there was dispute between the family of the petitioner and the defacto complainant's family, due to which, a false complaint has been given. Further, in this case, the alleged occurrence is said to have taken place on 05.05.2020 and four months later, a complaint came to be lodged. The reason given for the delay in lodging a complaint is not proper. The petitioner had harassed the victim girl continuously. The victim's father and the petitioner's father are brothers and therefore, if the defacto complainant had informed the occurrence to the parents of the petitioner, they would have stopped the petitioner from harassing the victim girl. Without informing the family members and enquiring about the truthfulness of the incident, the defacto complainant had rushed the Police Station, lodged a complaint to brook vengeance. Hence, he prays for grant of bail to the petitioner.

4. The learned Additional Public Prosecutor would submit that in this case, the occurrence is said to have taken place on 05.05.2020. He would further submit that the petitioner had committed penetrative sexual assault on the victim girl, who is studying Class XI in Government Higher Secondary School, Mathur. The victim feared that if she reveals the incident, her education would be spoiled, she would get adverse publicity. Hence, she was silent. Taking advantage of the same, the petitioner had further harassed the victim girl. Unable to bear the torture, the victim girl had informed her mother about the incident. Thereafter, the mother of the victim girl lodged a complaint and 164 statement also confirms the allegation against the petitioner. The victim was produced before the Government Doctor, Chengalpattu, who examined her on 24.09.2020. He would submit that the Doctor had given an opinion that " sexual violation cannot be ruled out" and the act of the petitioner is in-human. Hence, he opposed for grant of bail to the petitioner.

5. Considering the rival submission and on perusal of the material, it is seen that the petitioner is a cousin brother of the victim girl and he had brought the victim girl to the field on 05.05.2020, where the petitioner had committed penetrative sexual assault on the victim girl, who is a school going child. Further, she feared that if she revealed the incident, she would get adverse publicity and her studies would be stopped, therefore, she kept quite. Taking advantage of the same , the petitioner continued his harassment. Unable to bear, the victim informed her mother and on

the same day, the defacto complainant had lodged a complaint and the victim was sent for medical examination and the statement was recorded from the victim girl and her mother under Section 164 Cr.P.C and the opinion of the Doctor is in conformity to the case of the prosecution.

6. In view of the same, this Court is not inclined to grant bail to the petition. Accordingly, the Criminal Original Petition is dismissed.

-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 INSPECTOR OF POLICE,
ORAGADAM POLICE STATION,
KANCHEEPURAM DISTRICT.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON, NO.II, PUZHAI, CHENNAI-600
066.

CC to M/S.S.NAMBIRAJAN Advocate on payment of necessary charges

CRL OP.17925/2020

Date :09/12/2020

TA-14/12/2020

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