

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.12.2020

CORAM :

THE HON'BLE Mr. JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P.No.18145 of 2020

Deewan Ferozkhan

... Petitioner

Vs.

State Represented by,

... Respondent

The Inspector of Police,
W-7, All Women Police Station,
Anna Nagar, Chennai.
(Crime No.06 of 2020)

Prayer: Criminal Original Petition is filed under Section 439 of Cr.P.C, to enlarge the petitioner on bail in Crime No.06 of 2020 on the file of the respondent police.

For Petitioner : Mr.S.Suresh

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 16.09.2020 for the offence punishable under Sections 9 (1), 10 and 12 of POCSO Act r/w 506(i) of IPC, in Crime No.06 of 2020, seeks bail.

2. The case of the prosecution as per the *de facto* complainant Naziya is that her minor daughter was studying XII standard and that during April 2020, when she had entered into the bed room of the daughter in the night, she was found watching the video and when she had taken the phone from her, she had seen a person standing nude on the other side and later, when she had enquired her daughter, she had informed that she was friendly with one Deewan Ferozkhan from December 2019 and that he used to call her everyday in video call and behaved with her in a sexual abusive manner. On further enquiry, she had informed that said Deewan Ferozkhan has stalked her and harassed her and taken photos with her. The further

allegation is that the said Deewan Ferozkhan had threatened her daughter that if she does not contact him, he will upload the photographs in the social media. Hence, the complaint.

3. The learned counsel appearing for the petitioner would submit that the petitioner is innocent and he has been falsely implicated in this case. He would submit that the petitioner and the victim are known to each other for a long time and that they are friends and that the petitioner has not sexually harassed her, whereas a false complaint has been given against the petitioner and that the *de facto* complainant wanted to sever the friendship with the accused, however, the victim has not severed the friendship and hence, she has given a false complaint against the petitioner, based on the complaint, the petitioner was arrested. He would submit that the petitioner understands that the victim was subjected to medical examination and there is no sexual assault and further, the victim had been taken to the Magistrate for recording the statement under Section 164 Cr.P.C and the victim had not alleged anything against the petitioner and she had also stated that the petitioner has not sexually abused her in any manner.

4. The learned Government Advocate (Crl. Side) appearing for the respondent police would vehemently oppose stating that the petitioner had befriended the minor daughter of the *de facto* complainant and had sexual conversation with her in the mobile phone and later, taken photographs with her. He would submit that the victim was examined under Section 164 Cr.P.C and she has not stated anything against the petitioner.

5. Heard the learned counsel on either side. Perused the materials available on record including the 164 statement recorded from the victim.

6. Taking into consideration the facts and circumstances of the case and the submissions of the learned Counsels and also considering the period of incarceration suffered by the petitioner, 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 Special Judge, Special Court for POCSO offences, Chennai, 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, on his release from the prison, shall report before the respondent Police everyday at 10.30 a.m. for a period of two weeks and thereafter, every Saturday 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;

(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/-

16/12/2020

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 SPECIAL JUDGE FOR POCSO OFFENCES,
CHENNAI.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE
W-7 ALL WOMEN POLICE STATION,
ANNA NAGAR,
CHENNAI.

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI, CHENNAI.

+2 CC to M/S.S.SURESH Advocate on payment of necessary charges
SR.NO.8257

CRL OP.18145/2020

Date :16/12/2020