

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.18246 of 2020

1.S.Belavendiram

2.Johanna Gnanapragasam

... Petitioners

Vs.

The Sub-Inspector of Police
All Women Police Station
Vellore District
(Crime No.5 of 2020)

.... Respondent

PRAYER: Criminal Original Petition is filed under Section 438 of Criminal Procedure Code to enlarge the petitioners on bail in the event of their arrest in Crime No.5 of 2020 on the file of the Respondent.

For Petitioners: Mr.M.R.Thangavel

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

O R D E R

(This Case has been heard through video conferencing)

The petitioners, who apprehend arrest at the hands of the respondent police for the alleged offences punishable under Section 3, 4 and 21(2) of POCSO Act, 2012, in Crime No.5 of 2020, on the file of the respondent police, seek anticipatory bail.

2. The case of the prosecution as per the defacto complainant viz. Babitha is that her second daughter aged about 8 years is studying in Don Bosco Elementary School, Vellore. The allegation is that her daughter used to go to school by bus or auto and come home everyday. While so, on 17.02.2020 she had gone to the school and when she returned in the evening, there was some contusion in her cheek. When the defacto complainant enquired about the same, her daughter told her that when she was inside the school, one unknown person under the guise of giving her eatables had taken her to the bathroom and inappropriately touched her private parts. When the child had refused, the person had assaulted her. While so, on the next day of occurrence, the defacto complainant along with her husband and child had gone to the Head Master (H.M.) to give a complaint and the H.M. was on leave on that day, hence, they met the Assistant Headmistress (A.H.M.). The AHM on her complaint got antagonised and threatened the

defacto complainant and her husband to take T.C. and get away from the school. Again, on the next day, the defacto complainant along with her husband had gone to the office of the H.M. and that the H.M. also shouted at the defacto complainant's husband and also threatened them stating that a complaint will be lodged against him that he had come in an inebriated condition to the school and creating problem. Thereby, the defacto complainant had given a complaint against the unknown person, the H.M. and the A.H.M. of the school.

3. The learned counsel appearing for the petitioners viz. H.M. and A.H.M. would submit that on 18.02.2020 the defacto complainant along with her husband and child came to the school and informed them that her child was sexually abused by some unknown person. Immediately, the petitioners conducted enquiry and also perused the entire CCTV footage and there was absolutely no evidence to any intrusion by any unknown person inside the school on the particular date. Further, the petitioners had asked the defacto complainant's daughter to identify the place where the incident had taken place, but the victim girl was unable to identify the place and when they were discussing the happenings with the defacto complainant, her husband had created ruckus in the school and they also threatened all the staff members and lady teachers. Thereafter, on 18.02.2020 the 1st petitioner / H.M. had sent a complaint to the District Collector against the illegal activities of the husband of the defacto complainant and once again on 19.02.2020 the defacto complainant and her husband had come and created problem in the school. He would further submit that the petitioners have been cooperating with the respondent and that they have also handed over the entire hardware of the DVR containing the CCTV footage to the respondent police and when the respondent police conducted the enquiry with the girl, the girl was unable to identify the place of incident. He would further submit that the allegation against the petitioners are that they did not take appropriate action. He would further submit that the petitioners are cooperating with the investigation and there is absolutely no allegation against the petitioners that they have abetted or committed any sexual offence. He would further submit that in the statement under section 164 Cr.P.C. recorded from the victim girl, she has not spoken anything with regard to the petitioners' abusing her parents.

4. The learned Additional Public Prosecutor appearing for the respondent would vehemently oppose stating that the defacto complainant's minor daughter who is studying in the school in which the petitioners are the H.M. and A.H.M.. When the defacto complainant's minor daughter was in school on 17.02.2020 some intruder had sexually abused the victim girl by inappropriately touching her and on the next day when the matter was brought to the knowledge of the petitioners, they have threatened the parents of the victim not to give a complaint. He would further submit that the statement under section 164 Cr.P.C. has been recorded from the victim girl.

5. Heard the learned counsel on either side. Perused the F.I.R and the statement recorded from the victim girl under section 164 Cr.P.C.

6. Taking note of the facts and circumstances, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

(a) Accordingly, the petitioners are directed to be released on bail in the event of arrest or on their appearance within a period of fifteen days from the date on which the order copy is made ready before the learned Judicial Magistrate-III. Vellore on further condition that the petitioners shall execute a separate bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each, with two sureties each for the 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 automatically;

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

[c] the petitioners shall report before the respondent police daily at 10.30 a.m., for a period of two weeks and thereafter as and when required for interrogation.

[d] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[e] the petitioners shall not abscond either during investigation or trial.

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

[g] 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 JUDICIAL MAGISTRATE NO.III
VELLORE

2 THE CHIEF JUDICIAL MAGISTRATE
VELLORE [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUB INSPECTOR OF POLICE ,
ALL WOMEN POLICE STATION, VELLORE.

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

CRL OP.18246/2020

Date :16/12/2020

GKS:05/01/2021

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