

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.12.2020

CORAM :

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

CRL.O.P.No.19520 of 2020

Ayyappan

... Petitioner

Vs.

State rep. By

... Respondent

The Inspector of Police,
Muthupettai Police Station,
Tiruvarur District.
(Crime No.2446 of 2020)

PRAYER: Criminal Original Petition filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in Crime No.2446 of 2020 on the file of the respondent police.

For Petitioner : Mr.N.Palanivel

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 08.10.2020 for the offence punishable under **Sections 366-A of IPC and Section 6 r/w 5 (L) of Protection of Children from Sexual Offences Act, 2012**, in Crime No.2446 of 2020 on the file of the respondent police, seeks bail.

2.The case of the prosecution as per the *de facto* complainant is that the petitioner kidnapped his minor daughter aged 16 years. During the course of investigation, it came to light that the petitioner kidnapped the minor girl and thereafter, committed penetrative sexual assault on her.

3. The learned counsel appearing for the petitioner would submit that the petitioner is an innocent and he has been falsely implicated in this case. He would submit that the petitioner became friendly with the victim girl and on coming to know about their relationship, the parents of the victim girl had made arrangements to give her in marriage with someone else against her wishes. Thereby, the victim eloped from the house and compelled the

petitioner to take her to his house. Thereby, the petitioner took her to his house. Thereafter, they were living in his sister's house. He would submit that the petitioner believed that the victim is a major and thereby, without understanding the rigors and consequences of the POCSO Act, had taken her along with him. He would submit that the petitioner and the victim girl were ready for the marriage. Whereas, the father of victim had refused to give her in marriage with the petitioner on account difference in religion. Thereafter, on coming to know about the registration of the case, the petitioner came back to the village and Panchayath was conducted wherein, the Panchayathar stated that the marriage will be arranged after the victim attains majority. Whereas, the false complaint has been given as if, the petitioner kidnapped and committed penetrative sexual assault on the victim girl. He would submit that the petitioner is not a married man. On earlier occasion since, it was submitted by the prosecution that the petitioner is a married man, the earlier petition filed by the petitioner was dismissed on 10.11.2020 and that the petitioner has been suffering incarceration for more than 75 days from 08.10.2020. He would further submit that the petitioner understands that the victim girl was examined under Section 164 Cr.P.C. wherein, she has not supported the case of the prosecution and that the major part of investigation is over. Hence, he prays for grant of bail to the petitioner.

4. The learned Government Advocate (Crl. Side) appearing for the respondent would vehemently oppose stating that the petitioner had kidnapped the minor daughter of the defacto complainant and committed penetrative sexual assault on her. He would submit that the medical examination in respect of the petitioner and the victim girl is over and the statement of the victim girl has also been recorded under Section 164 Cr.P.C. and he would fairly concede that the victim has stated that she on her own volition had gone along with the petitioner. Further, the petitioner is not a married man.

5. Heard the learned Counsels and perused the materials placed on record including the statement of the victim girl recorded under Section 164 Cr.P.C.

6. Taking into consideration the facts and circumstance of the case and the fact that the statement of the victim girl does not support the case of the prosecution 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 Sessions Judge, Fast Track Mahila Court, Tiruvarur**, and on further conditions that:

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 prison, shall stay at Trichy and report before the Cantonment Police Station, everyday 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/-

23/12/2020

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 SESSIONS JUDGE,
FAST TRACK MAHILA COURT,
TIRUVARUR.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE
MUTHUPETTAI POLICE STATION,
TIRUVARUR DISTRICT.

4 THE OFFICER INCHARGE,
SUB JAIL, NANNILAM.

5 THE OFFICER INCHARGE,
THE CANTONMENT POLICE STATION,
TRICHY.

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

CRL OP.19520/2020

Date :23/12/2020

MN-28/12/2020



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