

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.18828 of 2020

Manivel

... Petitioner

Vs.

State, rep. by,
The Inspector of Police,
Adhiyaman Kottai Police Station,
Dharmapuri District.
(Crime No.781 of 2020)

.... Respondent

Prayer: Criminal Original Petition is filed under Section 439 of Cr.P.C, to enlarge the petitioner on bail in Crime No.781 of 2020 on the file of the respondent police.

For Petitioner : Mr.V.Sakkarapani

For Respondent : Mr.T.Shunmugarajeswaran
Government Advocate (Crl.Side)

O R D E R

(The case has been heard through video conference)

The petitioner, who was arrested and remanded to judicial custody on 24.10.2020 for the offence punishable under Section 366A of IPC subsequently altered to 366A of IPC r/w Section 5(1), 5(q), 6, 16, 17 of POCSO Act, 2012 and Section 9 of Child Marriage Act, 2006 in Crime No.781 of 2020, seeks bail.

2. The case of the prosecution as per the de facto complainant Swaminathan is that his minor daughter aged 17 years had completed XII standard during 2019-2020. While she was expecting her results, the first accused along with his relatives came to the house of the de facto complainant and kidnapped his minor daughter and thereafter, he had given a complaint at Adhiyamankottai police station. While so, on 17.04.2020 one Govindan had brought back his minor daughter and surrendered her before the police station and thereafter, he has advised his daughter and she was at home. Once again, on 26.04.2020, the accused along with other accused had come to the house of the de facto complainant and kidnapped his daughter. The further allegation is that during the course of investigation, it was found that the first accused Manivel had kidnapped the daughter of the defacto complainant and performed child marriage and committed penetrative sexual assault on her. 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 daughter of the de facto complainant belong to same community and they were in love with each other for several years and that coming to know of the same, the de facto complainant was making preparation to give her marriage to someone against the wishes of the victim girl and thereby, the victim girl, on her own volition, eloped from the house of the de facto complainant and joined the petitioner and thereafter, both of them went to Bangalore. He would submit that the petitioner, who is an uneducated youth, who is not aware of the rigors and consequences of the child marriage, had taken the victim and lived as husband and wife for some time and thereafter, the victim was secured by the police. He would further submit that the medical examination in respect of the petitioner and the victim has been completed and the statement under Section 164 Cr.P.C has also been recorded from the victim, wherein she had stated that on her own volition, she had gone along with the petitioner since her father was making preparation for the marriage against her choice. He would further submit that the steps are being taken for the marriage between the petitioner and the victim and that the victim is also interested to marry the petitioner when she attains majority. He would submit that the petitioner was arrested on 24.10.2020 and he is custody for about two months and hence, he prays to grant bail to the petitioner.

4. The learned Government Advocate (Crl. Side) appearing for the respondent police would vehemently oppose stating that the petitioner along with family members and friends kidnapped the victim and performed the child marriage and committed penetrative sexual assault on her. He would submit that the victim girl was secured and that in the statement under Section 164 Cr.P.C recorded from the victim, she has not supported the case of the prosecution. He would further submit that the petitioner and the victim girl were lived as husband and wife and the victim girl is also pregnant now and that the medical examination is also over.

5. Heard the learned counsel on either side. Perused the materials available on record including the statement recorded under Section 164 Cr.P.C 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 Fast Track Mahila Court, Dharmapuri, 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. 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 FAST TRACK MAHILA COURT,
DHARMAPURI

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
ADHIYAMAN KOTTAI POLICE STATION,
DHARMAPURI DISTRICT.

4 THE OFFICER INCHARGE,
SUB JAIL, DHARMAPURI

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

CRL OP.18828/2020

Date :16/12/2020

RVR 17/12/2020



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