

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2020

CORAM

THE HONOURABLE Mr. JUSTICE A. D. JAGADISH CHANDIRA

Crl.O.P.No.19171 of 2020

Vasanth

... Petitioner

Vs.

State by its,

Inspector of Police,

Sholavaram Police Station,

Sholavaram,

Thiruvallur District.

... Respondent

Prayer: Criminal Original Petition filed under Section 438 of Cr.P.C., to enlarge the petitioner on bail in the event of his arrest in Crime No.5158 of 2020 pending on the file of the respondent police.

For Petitioner : Mr.S.Suresh

For Respondent : Mr.M.Mohamed Riyaz

Additional Public Prosecutor

ORDER

(The case has been heard through video conference)

The petitioner, who apprehends arrest at the hands of the respondent police for the alleged offences punishable under Section 366(A) of IPC r/w Section 5(i) and 6 of POCSO Act in Crime No.5158 of 2020, on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution as per the *de facto* complainant Prabu is that his minor daughter was found missing from 13.11.2020. Based on the complaint, originally the case was registered under the caption 'For Girl Missing'. Thereafter, during the course of investigation, it came to light that the petitioner had kidnapped the victim and committed penetrative sexual assault on the victim and thereby, the case was altered.

3. The learned counsel for the petitioner would submit that the petitioner is innocent and he has been falsely implicated in this case. He would submit that the victim, due to a misunderstanding with the *de facto* complainant, left home and came to the petitioner's house and that the petitioner's parents are none other than the uncle and aunt of the *de facto* complainant. He would submit that subsequent to the petitioner's parents coming to know of the registration of the case, dropped the victim at her father's place. He would submit that the petitioner's parents and the victim's father are close relatives and that after the victim girl was handed over to the *de facto* complainant, he had insisted the respondent not to precipitate the case. He would submit that the victim has been subjected to medical examination and she was taken to the learned Magistrate and the statement under Section 164 Cr.P.C has been recorded from the victim girl, wherein, she had stated that the petitioner has not committed any sexual assault on her and that the victim had come to the brother-in-law's house of the petitioner and the brother-in-law is none other than the uncle of the victim girl. He would submit that in the 164 statement, the victim has stated that she had gone to her uncle's house on her own volition and on suspicion, her father had given a false complaint as if the petitioner had kidnapped her. He would submit that the petitioner and the *de facto* complainant are close relatives. He would submit that because of this case, the name of the victim is also spoiled. Further, the father of the victim has requested the parents of the petitioner for arranging the marriage between the victim and the petitioner and he has also filed necessary affidavit before this Court stating that once the victim attains majority, she will be given in marriage to the petitioner. He would submit that steps are also been taken by the petitioner and the *de facto* complainant to get the complaint quashed. Hence, he prays for grant of anticipatory bail to the petitioner.

4. The learned Additional Public Prosecutor appearing for the respondent would vehemently oppose stating that the petitioner had kidnapped the minor daughter of the *de facto* complainant and committed penetrative sexual assault. He would submit that in the statement under Section 164 Cr.P.C recorded from the victim girl she has not supported the case of the prosecution.

5. Heard the learned counsel on either side. Perused the materials available on record including the statement under Section 164 Cr.P.C recorded from the victim girl.

6. Taking into consideration the facts and circumstances of the case and the submissions made by the learned Counsel, this Court is inclined to grant anticipatory bail to the petitioner subject to the following conditions:

7. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen (15) days from the date on which the copy of the order is made ready, before the learned Sessions Judge, Fast Track Mahila Court, Thiruvallur, on condition that the petitioner shall 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 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 and on further condition that:

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

[b] the petitioner shall report before the respondent Police everyday at 10.30 a.m., for a period of one (1) week and thereafter, every Monday at 10.30.a.m until further orders;

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond either during investigation or trial.

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

[f] If the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

8. 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,
THIRUVALLUR.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

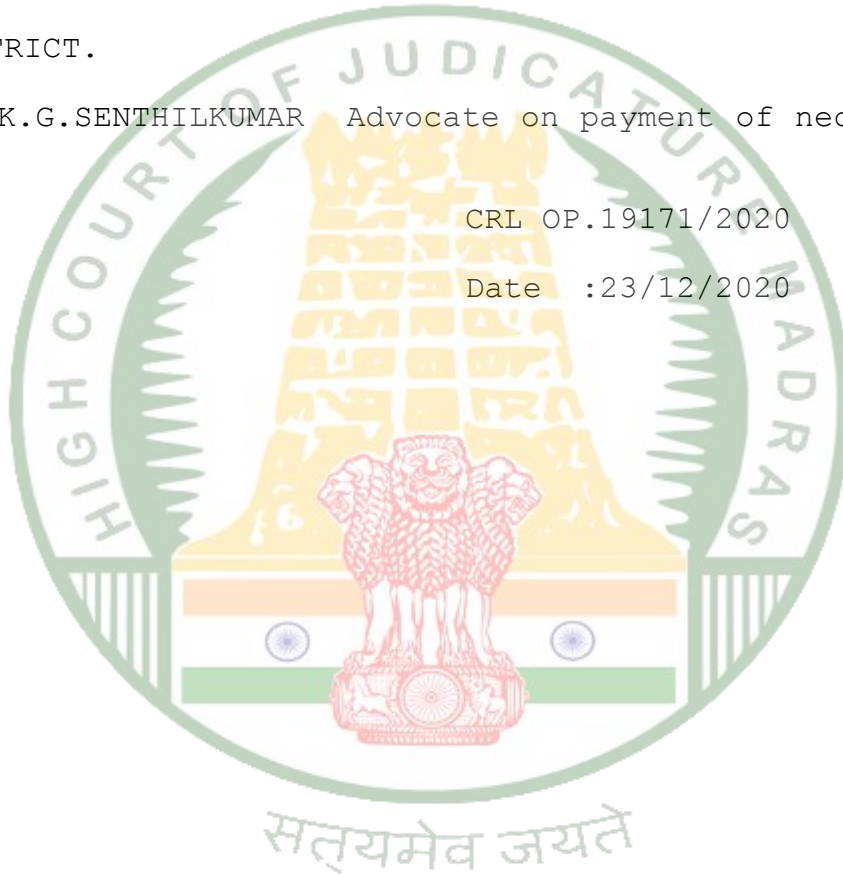
3 THE INSPECTOR OF POLICE,
SHOLAVARAM POLICE STATION,
SHOLAVARAM,
THIRUVALLUR DISTRICT.

CC to M/S.K.G.SENTHILKUMAR Advocate on payment of necessary
charges

CRL OP.19171/2020

Date :23/12/2020

MK:07/01/2021



WEB COPY