

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.12.2020

CORAM :

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

CRL.O.P.No.19207 of 2020

and CRL.M.P.NO.7929 of 2020

K.Mohan Dhalani

... Petitioner

Vs.

State Rep by The Inspector of Police, ... Respondents
W-8, All Women Police Station,
Thirumangalam,
Chennai.
(Crime No.20 of 2020)

1 Mrs.Madhu Gulrajani [PETITIONER DE-FACTO COMPLAINANT]

2 Mrs.Rajesh Gulrajani

[ORDERED AS PER ORDER OF THIS COURT DATED 15/12/2020 IN
CRL.MP.7929/2020 IN CRL.O.P.NO.19207/2020]

Prayer: Criminal Original Petition is filed under Section 439 of
Cr.P.C, to enlarge the petitioner on bail in Crime No.20 of 2020
on the file of the respondent police.

For Petitioner : Mr.Abudu Kumar Rajarathinam

for Mr.S.Ashok Kumar

For Respondents : Mr.T.Shunmugarajeswaran
Government Advocate (Crl.Side) - For R1

For Intervenor : Mr.P.V.Balasubramaniam

ORDER

(The case has been heard through video conference)

The petitioner, who was arrested and remanded to judicial
custody on 20.11.2020 for the offence punishable under Section 6 of
the POCSO Act, in Crime No.20 of 2020, seeks bail.

2. The case of the prosecution as per the *de facto* complainant Madhu Gulrajani is that she along with her husband and daughter are residents of United Kingdom. The further allegation is that for the past few years, the *de facto* complainant's minor daughter had been unable to manage/control her anger and emotions often leading to several issues at her school affecting her relation with other fellow students. Her School had observed her anger issues and suggested that she may undergo counselling sessions to control her emotions. As a parent, the *de facto* complainant felt it to be a right decision and agreed to go ahead with the counselling sessions. Initially, the counselling sessions helped her immensely in controlling her anger and emotions and drastically improved her relation with other school peers as well. Thereafter, with the consent of the *de facto* complainant's daughter, she decided to go for an in-depth counselling sessions to control her anger. During one of the sessions, she was shocked to hear of the statement of sexual assault and harassment undergone by her daughter to the counsellor that she was subjected to sexual assault and harassment by the accused Mohan Kishinchand Dhalani during her visit to India during the year 2014 at Newry Park Towers, Block B, Apt-B601 at Chennai-600 101. Thereafter, the *de facto* complainant on 10.03.2018 approached the local Metropolitan Police of London and registered a complaint, the police officials in England conducted an interview with the daughter of the *de facto* complainant and her statement was recorded and thereafter, during the course of enquiry, the *de facto* complainant was directed to approach the appropriate Indian Legal Authority to file a complaint in the year 2018 and thereafter, the petitioner had come down to India during November 2020 and given a complaint to the respondent police. Based on which, a case was registered and the petitioner was arrested on 20.11.2020.

3. The learned counsel appearing for the petitioner would submit that the petitioner is an innocent and a motivated complaint has been against him due to dispute in the family. He would submit that for several years, the petitioner and the *de facto* complainant's father were running a joint business and thereafter, due to some dispute in the family, they have separated themselves and they are doing separate business. He would submit that due the family dispute, a false case has been given to tarnish the image of the petitioner. He would submit that the marriage of the petitioner's son has been fixed by the first week of December, 2020 and the *de facto* complainant had come to India, given a complaint, based on which, the petitioner was arrested. He would submit that immediately, after the arrest of the petitioner, the *de facto* complainant and her associates have posted several abusive contents against the petitioner in the social media. He would further submit that apart from the abusive contents posted against the petitioner in the social media, they have also posted posters all around the neighbourhood of the petitioner to tarnish the image of the petitioner with a sole objective of creating a problem and stopping the marriage of the son of the petitioner. He would submit that based on the complaint and arrest of the petitioner, the petitioner's son marriage was also dropped. He would submit that though the alleged occurrence has taken place during the year 2014

and that it had come to the knowledge of the *de facto* complainant in the year 2018, the complaint was made before the respondent police only after two years. He would submit that the complaint after two years, particularly prior to the date of marriage of the petitioner's son, would go to show that it is a motivated complaint. He would submit that the petitioner is a senior citizen and that he has undergone two surgeries for colon cancer and that he is still undergoing treatment and he is also having heart problem. He would further submit that after giving the complaint and after the arrest of the petitioner, the statement under Section 164 of Cr.P.C has been recorded from the *de facto* complainant and her daughter and after recording the statement, the *de facto* complainant, her daughter/victim and her husband have left the country and there is no apprehension that the petitioner will interfere with the investigation or threaten the witnesses. He would submit that the petitioner has also enclosed the medical certificates and also copies of the abusive contents posted against him in the social media and also photographs of the posters posted around the neighborhood of the petitioner to tarnish his image. He would submit that the petitioner is aged about 67 years and facing serious medical problems and even as per the allegations in the complaint, there is no averment of penetrative sexual assault and that the incident could not have happened since there were about 12 persons in the house of the family at the time of the alleged occurrence and that the victim has not spoken anything during the year 2014, thereafter, the complaint is initially alleged to be given to the London Police during 2018 and the *de facto* complainant has willfully given a complaint after two years during November 2020 to settle scores on account of family dispute and succeeded in stopping the marriage of the petitioner's son.

4. The learned Government Advocate (Crl. Side) appearing for the respondent police would vehemently oppose stating that the *de facto* complainant and the victim are normal residents of United Kingdom. During the year 2014, the victim along with the *de facto* complainant had visited her grandparents house and at that time the petitioner, who is the paternal uncle of the *de facto* complainant and the father of the *de facto* complainant were living as a joint family at Anna Nagar West Extension and during the time, the accused had sexually harassed the victim. He would submit that though the *de facto* complainant came to the knowledge of the offence at United Kingdom in the year 2018, the complaint has been given to the respondent police on 07.11.2020 and the accused was arrested on 20.11.2020. He would further submit that the statement of the defacto complainant and the victim has been recorded under section 164 Cr.PC. However, since, the parents of the victim did not agree for the medical examination of the victim and victim has not been subjected to medical examination. He would further submit that the defacto complainant, victim and the husband of the defato complainant have left the country and flown back to United Kingdom. He would further submit that the investigation is pending.

oppose stating that it is a case of serious offence of sexual harassment of a child. He would submit the petitioner, who is a close relative of the victim had sexually assaulted the victim, due to which, the victim faced severe, mental trauma and behavioural issues and she was unable to control her anger, emotions and thereafter, the victim was referred to counselling. During the counselling sessions, she broke open and disclosed that she had been subjected to sexual assault in the year 2014, thereafter, the parents of the victim gave a complaint before the police in United Kingdom in the year 2018 and thereafter, series of enquiry and investigation were conducted and the Police at United Kingdom expressed their inability to register the case on the point of jurisdiction and referred the matter to India. Since the victim was severely traumatised, they were unable to come to India immediately and due to the education of the victim and covid pandemic they were able to come to India only during November 2020 and give the complaint, based on which, the present case has been registered. He would submit that the petitioner is an influential person and while he was in jail, the family members of the petitioner have also threatened the *de facto* complainant and her family members in respect of which, a complaint had been given and it has been taken up for enquiry in CSR.No.981 of 2020 dated 20.11.2020.

6. At this juncture, the learned counsel for the petitioner would submit that the petitioner is the paternal uncle of the *de facto* complainant and that on coming to know of the arrest of the petitioner, his brothers, who are the common relatives of the petitioner and the *de facto* complainant have on their own gone to the house of the brother of the *de facto* complainant to enquire what had happened. They have not gone at the insistence of the petitioner who is in prison and the petitioner cannot be faulted for that. He would further submit that the petitioner understands that the case has been compromised between the family members and the CSR has been closed. The petitioner, being an aged person, is in custody from 20.11.2020 and hence, he prays bail.

7. This Court enquired the learned Government Advocate (Crl.Side) and he confirmed that the CSR.No.981 of 2020 has been closed. It is also reported by the respondent police that the *de facto* complainant and her family members have left to United Kingdom and the statements of the *de facto* complainant and the victim have also been recorded under Section 164 Cr.P.C.

8. Heard the learned counsel on either side and also the learned counsel for the intervener. Perused the materials available on record including the typed set of papers filed by both parties and the CD file and the statement recorded under Section 164 Cr.P.C from the *de facto* complainant and the victim.

9. 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 Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, 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 shall report before the respondent Police everyday at 10.30 a.m. for a period of two weeks and thereafter, every Monday at 10.30.a.m until further orders;

(d) the petitioner shall surrender his passport before the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai and if the petitioner do not possess any passport, he shall file an affidavit regarding the same;

(e) the petitioner shall not commit any offences of similar nature;

(f) the petitioner shall not abscond either during investigation or trial;

(g) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(h) 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];

(i) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

10. With the above directions, this Criminal Original Petition is ordered.

-sd/-

15/12/2020

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,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES,
UNDER POCSO ACT, CHENNAI.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE JAILER,
SUB JAIL, SAIDAPET.

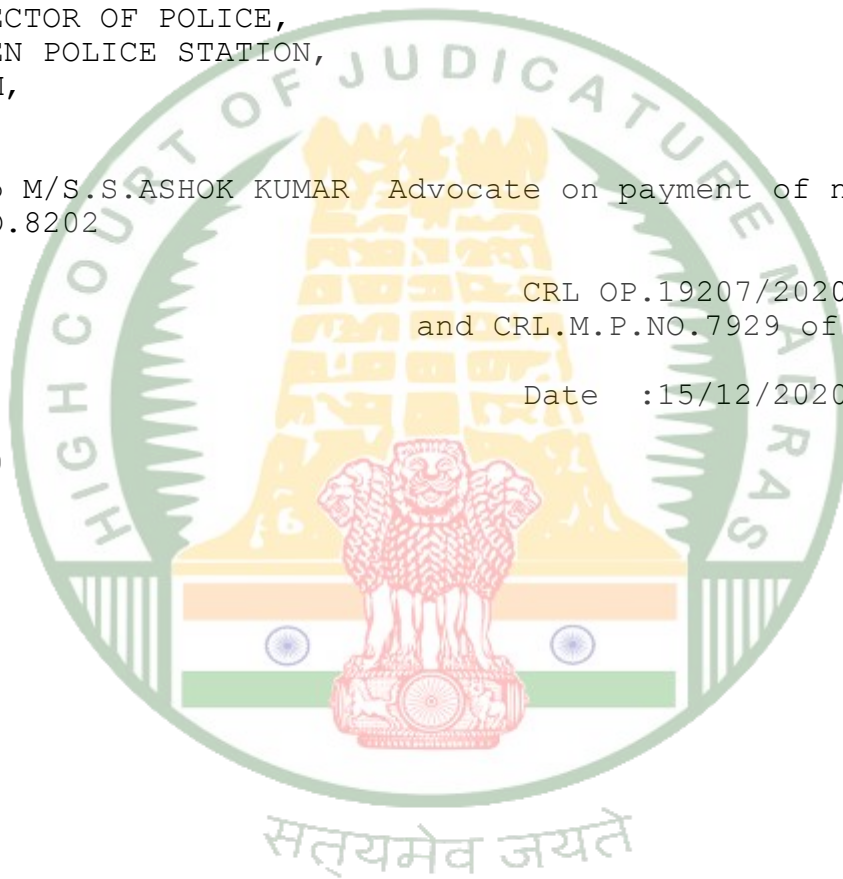
4 THE INSPECTOR OF POLICE,
W-8, ALL WOMEN POLICE STATION,
THIRUMANGALAM,
CHENNAI.

+2 CC to M/S.S.ASHOK KUMAR Advocate on payment of necessary
charges SR.NO.8202

CRL OP.19207/2020
and CRL.M.P.NO.7929 of 2020

Date :15/12/2020

TA-16/12/2020



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