

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.19339 of 2020

1.Prasanth

2.Selvam

3.Malliga

4.Murugan

5.Saroja

... Petitioners

Vs.

The State Rep. by,
Inspector of Police,
All Women Police Station,
Tiruvannamalai.
(Crime No.21 of 2020)

... Respondent

Prayer: Criminal Original Petition is filed under Section 439 of Cr.P.C, to enlarge the petitioners on bail in Crime No.21 of 2020 on the file of the respondent police.

For Petitioners : Mr.B.Jawahar

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

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O R D E R

(The case has been heard through video conference)

The petitioners, who were arrested and remanded to judicial custody on 06.10.2020 for the offence punishable under Section 9 of Prohibition of Child Marriage Act, 2006 and Sections 3, 4, 6, 5(1) of POCSO Act, 2012, in Crime No.21 of 2020, seek bail.

2. The case of the prosecution as per the *de facto* complainant Ashok, Organizer of the Child Helpline is that the petitioners 2 to 4 performed child marriage between the first petitioner and their minor daughter, aged 16 years. The further allegation is that the first petitioner had penetrative sexual assault with the victim girl. Hence, the complaint.

3. The learned counsel appearing for the petitioner would submit that the petitioners 2 to 5 are close relatives and the second petitioner is the elder brother of the fifth petitioner and that they have arranged the marriage between the first petitioner and the daughter of fourth and fifth petitioners. He would submit that the first petitioner is the son of the petitioners 2 and 3 and the victim is the daughter of the petitioners 4 and 5. He would submit that the second petitioner is the elder brother of fifth petitioner and that they are rustic villagers. He would submit that since they being close relatives have arranged the marriage for the first petitioner with the daughter of the petitioners 4 & 5 and that they were not aware of the age of the victim. He would further submit that since they being rustic villages, they are not aware of the rigors and consequences of the child marriage prohibition Act and the rigors of the POCSO Act. He would submit that on the complaint given by Child Helpline Officer, the petitioners were arrested on 06.10.2020 and they are in custody for more than 65 days. He would submit that the medical examination in respect of the first petitioner and the victim have been completed and the statement under Section 164 Cr.P.C has also been recorded from the victim, wherein, she had stated that the marriage was performed on 31.08.2020 and that she has not alleged anything as if the first petitioner sexually assaulted her.

4. The learned Government Advocate (Crl. Side) appearing for the respondent police would vehemently oppose stating that the petitioners 2 to 5 are close relatives and that they have arranged the marriage between the son of the petitioners 2 and 3 with the minor daughter of the petitioners 4 and 5, pursuant to which, the first petitioner committed penetrative sexual assault on the victim. He would submit that the medical examination in respect of the first petitioner and the victim girl have been completed and the statement under Section 164 Cr.P.C has been recorded from the victim.

5. At this juncture, the learned counsel for the petitioners would submit that the petitioners are close relatives and even after the victim attains majority, the family members have decided to conduct the marriage in accordance with law.

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 petitioners, this Court is inclined to grant bail to the petitioners subject to the following conditions:

(a) Accordingly, the petitioners are ordered to be released on bail on condition to execute a separate 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, Tiruvannamalai, 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 petitioners, on their release from the prison, shall report before the respondent Police everyday at 10.30 a.m. for a period of two weeks and thereafter, the petitioners 1, 2 & 4 shall report before the respondent police every Monday at 10.30.a.m until further orders and the petitioners 3 & 5 shall report before the respondent police as and when required for interrogation;

(d) the petitioners shall not commit any offences of similar nature;

(e) the petitioners shall not abscond either during investigation or trial;

(f) the petitioners 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 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];

(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 SPECIAL JUDGE,
EXCLUSIVE TRIAL OF CASES UNDER POCSO ACT,
TIRUVANNAMALAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

3 THE SUPERINTENDENT,
CENTRAL PRISON FOR WOMEN,
VELLORE.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
TIRUVANNAMALAI

CC to M/S B.JAWAHAR Advocate on payment of necessary charges

CRL OP.19339/2020

Date :16/12/2020

MK:17/12/2020