

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.19810 of 2020

Dhinesh

... Petitioner

Vs.

State by,

The Inspector of Police,
All Women Police Station,
Tiruthuraipoondi,
Tiruvarur District.
(Crime No.16 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.16 of 2020 on the file of the respondent police.

For Petitioner : Mr.N.Palanivel

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 05.11.2020 for the offence punishable under Section 366 (A) of IPC and 6 r/w 5(1) of POCSO Act, 2012, in Crime No.16 of 2020, seeks bail.

2. The case of the prosecution as per the de facto complainant Jaya is that the accused kidnapped her minor daughter from her lawful custody, based on that, a case was registered initially for the offence under Section 366A of IPC and later, during the course of investigation, it came to light that the accused had kidnapped her and committed penetrative sexual assault on her and thereby, the case was altered into one under Section 366(A) of IPC and Section 6 r/w 5(1) of POCSO Act, 2012.

3. The learned counsel appearing for the petitioner would submit that the petitioner is innocent and that the petitioner and the alleged victim were friends for the past five years. He would submit that the mother of the victim, coming to know of the relationship, had harassed the victim and thereby, the victim eloped from the house and joined the petitioner and thereafter, they travelled to Chennai and stayed at Manali and coming to know of the registration of the case, the petitioner along with the victim surrendered before the Madappuram All Women Police Station and thereafter, the petitioner was arrested and remanded to judicial custody on 05.11.2020. He would submit that the medical examination in respect of the petitioner and the victim has been over and that the statement under Section 164 Cr.P.C has also been recorded from the victim. He would submit that the petitioner understands that in the statement under Section 164 Cr.P.C, the victim had stated that the petitioner had hugged and kissed her and he has not committed any penetrative sexual assault on the victim girl. He would submit that the petitioner is in custody from 05.11.2020 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 kidnapped the minor daughter of the de facto complainant and taken her to Manali, where he had sexually harassed her. He would submit that the medical examination in respect of the petitioner and the victim girl was over and the statement under Section 164 Cr.P.C has also been recorded from the victim girl, wherein she had stated that the petitioner had hugged and kissed her.

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 learned Sessions Judge, Fast Track Mahila Court, Tiruvarur, 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.

सत्यमेव जयते

TO

1 THE SESSIONS JUDGE,
FAST TRACK MAHILA COURT,
TIRUVARUR.

2 THE JAILER,
DISTRICT PRISON,
NAGAPATTINAM.

WEB COPY

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

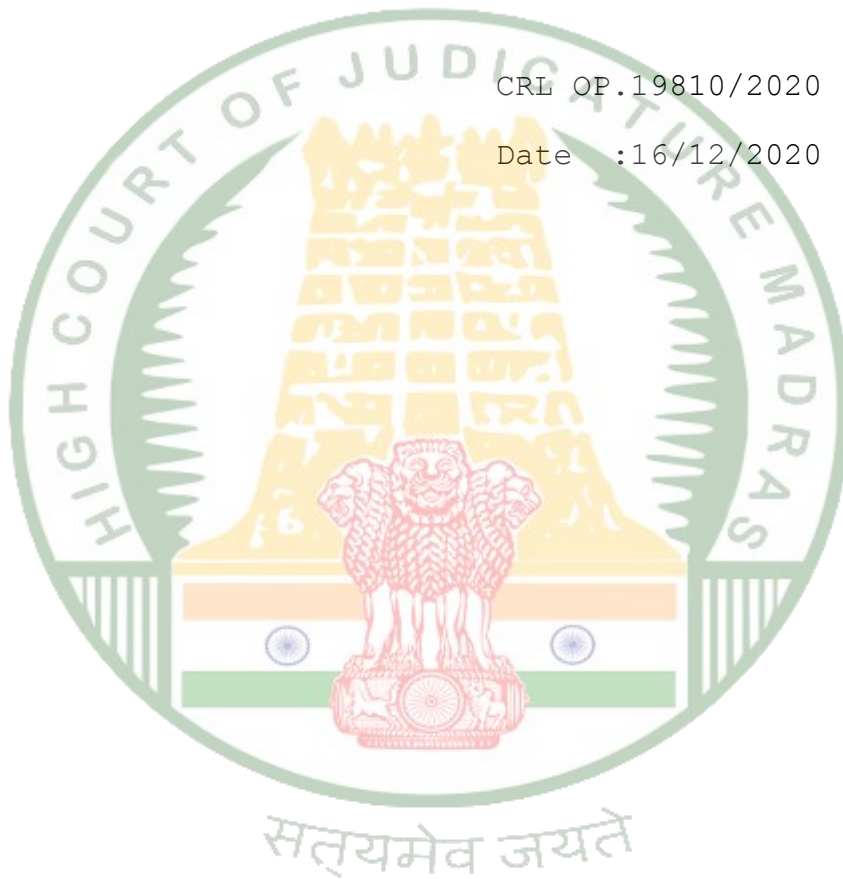
4 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
THIRUTHURAIPOONDI,
TIRUVARUR DISTRICT.

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

CRL OP.19810/2020

Date :16/12/2020

cs 17/12/2020



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