

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.12.2020

CORAM :

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

CRL.O.P.No.19748 of 2020

SHIEK @ SHIEKMYDEEN

... Petitioner

Vs.

The State Rep. By

... Respondent

The Inspector of Police,
All Women Police Station,
Thiruthuraipoondi,
Tiruvarur District.
(Crime No.17 of 2020)

Prayer: Criminal Original Petition is filed under Section 439 of Cr.P.C, to enlarge the petitioner on bail in Crime No.17 of 2020 on the file of the respondent police.

For Petitioner : Mr.Swami Subramanian

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

ORDER

(The case has been heard through video conference)

The petitioner, who was arrested and remanded to judicial custody on 18.11.2020 for the offence punishable under Section 366 of IPC and in Section 6 r/w 5(1) of Protection of Children from Sexual Offences Act, 2012, in Crime No.17 of 2020, seeks bail.

2.The case of the prosecution as per the defacto complainant viz. Mahalakshmi is that the petitioner had kidnapped her minor daughter and repeatedly committed 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 further submit that the petitioner and the victim girl were friendly with each other and he

suspected that the petitioner had kidnapped the victim girl, given a complaint before the respondent police. When the petitioner came to know about the registration of the case, he along with the victim girl surrendered before the respondent police and thereafter, the petitioner was arrested and remanded to judicial custody. He would further submit that the petitioner is a young person of 19 years, and that without understanding the rigors and consequences of POCSO Act, had married the victim girl and they were living as husband and wife. He would further state that the petitioner understands that the statement of victim girl has also been recorded under Section 164 Cr.P.C., wherein, she has stated that she has accompanied the petitioner on her own volition and their marriage took place in the Malaikovil temple. He would further submit that the petitioner is in judicial custody from 18.11.2020.

4.The learned Government Advocate (Crl.Side) appearing for the respondent would vehemently oppose stating that the petitioner had kidnapped the minor daughter of the defacto complainant and had married her in Malaikovil temple, Karaikudi, however, he would submit that the medical examination in respect of the petitioner and the victim has been over. and the statement has been recorded from the victim girl under Section 164 Cr.P.C..

5.Heard the learned Counsel on either side. Perused F.I.R. and statement recorded under Section 164 Cr.P.C. from the victim girl.

6.Taking into consideration of the facts and submissions made by the learned counsels and also taking into consideration the period of incarceration suffered by the petitioner from 18.11.2020, 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 Judicial Magistrate, Thiruthuraipoondi, Thiruvarur District** 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 prison shall stay at Karaikudi and report before the Karaikudi Town Police Station 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/-

22/12/2020

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 JUDICIAL MAGISTRATE,
THIRUTHURAIPOONDI,
THIRUVARUR DISTRICT.

2 THE CHIEF JUDICIAL MAGISTRATE
THIRUVARUR. [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

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

5 THE JAILER,
SUB JAIL, THIRUTHURAIPOONDI.

6 THE OFFICER INCHARGE,
KARAIKUDI TOWN POLICE STATION,
KARAIKUDI.

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

CRL OP.19748/2020

Date :22/12/2020