

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.19937 of 2020

Barath

... Petitioner

Vs.

The State, Rep. by
The Inspector of Police,
Mahendramangalam Police Station,
Dharmapuri District.
(Crime No.798 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.798 of 2020 on the file of the respondent police.

For Petitioner : Mr.V.Vargees Amal Raja

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 20.10.2020 for the offence punishable under Sections 366(A) @ 363, 366 of IPC and 5(1), 6 of POCSO Act, 2012 and 9 of Child Marriage Act, 2006, in Crime No.798 of 2020, seeks bail.

2. The case of the prosecution as per the de facto complainant Sankar is that his minor daughter aged 17 years was kidnapped by the petitioner on 10.10.2020. Based on the complaint, a case was registered under Section 366 A of IPC. During the course of investigation, it came to light that the petitioner had kidnapped the victim in a scooter and committed child marriage and thereafter, committed penetrative sexual assault on her. The petitioner was arrested on 20.10.2020.

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 submit that the petitioner and the victim were in love with each other and they belong to the same community. He would submit that since the parents of the victim have decided to give her in marriage to some one against her choice, she eloped from the house of the de facto complainant and both of them went to Hosur and have got married and thereafter, lived as husband and wife. He would submit that the petitioner, being a young man, was not aware of the rigors and the consequences of the POCSO Act. He would submit that coming to know of the case, he surrendered before the respondent

police and the victim was also handed over to the de facto complainant. He would submit that being same community, the parents of the petitioner are taking steps to conduct the marriage between the petitioner and the victim. He would further submit that the petitioner and the victim are subjected to Medical examination and the statement under Section 164 of Cr.P.C has also been recorded from the victim. He would submit that the petitioner understands that the victim stated in the 164 statement that she had voluntarily accompanied with the petitioner and it is not the case of kidnap and hence, he prays for grant of 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 aged 17 years, committed penetrative sexual assault on her. He would submit that the victim has been secured and the statement under Section 164 Cr.P.C has also been recorded from the victim.

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

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 Judicial Magistrate, Palacode, 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 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/-

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 JUDICIAL MAGISTRATE,
PALACODE

2 THE CHIEF JUDICIAL MAGISTRATE
DHARMAPURI (FOR INFORMATION)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
MAHENDRAMANGALAM POLICE STATION,
DHARMAPURI DISTRICT.

5 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM

CC to V.VARGEES AMAL RAJA
charges Sr.8223

Advocate on payment of necessary

CRL OP.19937/2020

Date :15/12/2020

RVR 16/12/2020