

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.19971 of 2020

Kushboo

... Petitioner

Vs.

The State rep. By

... Respondent

The Inspector of Police,
Walajabad Police Station,
Kancheepuram District.
(Crime No.1749 of 2020)

Prayer: Criminal Original Petition is filed under Section 439 of Cr.P.C, to enlarge the petitioner on bail in Crime No.1749 of 2020 on the file of the respondent police.

For Petitioner : Mr.M.Rajinikanth

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 09.11.2020 for the offence punishable under Section 174 Cr.P.C., @ 315 of IPC, in Crime No.1749 of 2020, seeks bail.

2. The case of the prosecution as per the *de facto* complainant Dr.Jayasri, Managing Director of APJ Hospital, Walajabad, Kancheepuram District is that the accused, who is an unmarried woman, had given birth to a child aged about 28 to 32 weeks in the hospital toilet. In order to screen the birth, she had killed the baby and attempted to flush it in the toilet and thereafter, the fetus was recovered. During the course of investigation, it came to light that the petitioner, who is an unmarried woman, had intimacy with one Diwakar, due to which, she had become pregnant and she was unaware of the pregnancy and when she had gone to the hospital, the doctors had informed that she was pregnant and thereby, out of fear, the petitioner, in order to screen the pregnancy, had flush the fetus into the toilet. Hence, the complaint.

3.The learned counsel appearing for the petitioner would submit that the petitioner is an innocent and that the petitioner, who is an unmarried woman, had intimacy with one Diwakar and she was not aware of the pregnancy, when she had gone to the hospital, the doctors informed that she was pregnant and out of fear, the victim suffered miscarriage when she was in toilet of the hospital, before she could lift the baby, it went into the flush. He would submit that the act of the petitioner was not intentional. He would submit that the petitioner was arrested on 09.11.2020 and she is custody for more than 35 days.

4. The learned Government Advocate (Crl. Side) appearing for the respondent police would vehemently oppose stating that the complainant is the doctor of the hospital. He would submit that the petitioner, who is an unmarried woman, got pregnant through a intimacy with one Diwakar and that she was unaware of the pregnancy and she had gone to the hospital and the doctors informed that she was pregnant, out of fear, she suffered miscarriage inside the toilet and that she attempted to screen the evidence by dumping the foetus into the toilet. He would submit that the petitioner was admitted in the hospital and thereafter, after treatment, she was arrested on 09.11.2020.

5. 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-II, Kancheepuram, 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.

6. 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 JUDICIAL MAGISTRATE NO.II,
KANCHEEPURAM.

2 THE CHIEF JUDICIAL MAGISTRATE
CHENGALPATTU. [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
WALAJABAD POLICE STATION,
KANCHEEPURAM DISTRICT.

5 THE SUPERINTENDENT,
SPECIAL PRISON FOR WOMEN,
VELLORE.

+1 CC to M/S.M.RAJINIKANTH Advocate on payment of necessary charges SR.NO.8315

CRL OP.19971/2020

Date :16/12/2020

TA-17/12/2020