

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.12.2020

CORAM :

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

CRL.O.P.No.20372 of 2020

Balu

... Petitioner

Vs.

State represented by,

... Respondent

The Inspector of Police,
Ayilpatty Police Station,
Namakkal District.

(Crime No.532 of 2020)

Prayer: Criminal Original Petition is filed under Section 439 of Cr.P.C, to enlarge the petitioner on bail in Crime No.532 of 2020 on the file of the respondent police.

For Petitioner : Mr.Karan and Uday

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 22.11.2020 for the offence punishable under **Section 304B Missing altered to 5(1) r/w 6 of POCSO Act, 2012**, in Crime No.532 of 2020, seeks bail.

2. The case of the prosecution as per the defacto complainant Bothaiyammal is that her minor daughter aged 17 years who had studied 12 std. was found missing from 4 p.m. on 18.11.2020 and on the complaint given by the defacto complainant, originally the case was registered under the caption "girl missing". During the course of investigation, it came to light that the petitioner had kidnapped the minor daughter of the defacto complainant and committed penetrative sexual assault her.

3.The learned counsel appearing for the petitioner would submit that the petitioner is an innocent and he has been falsely implicated in this case. He would submit that the case of love affair has been falsely projected as a case of kidnap and rape. He would submit that the petitioner and victim belong to the same community and same village and they loved each other for the past few years. On coming to know the love of the petitioner and the victim, the defacto complainant arranged marriage between the victim and someone else against her choice and thereby, the victim eloped from her house and joined the petitioner and that the petitioner being a young man, without understanding the rigors and consequences of the POCSO Act, had taken her to his house and that the victim was with him for two days. Thereafter, on coming to know the registration of the case, the petitioner along with the victim girl had surrendered before the respondent police and the victim was sent to home and the petitioner was arrested and remanded to judicial custody. He would submit that the petitioner understands that now the victim is with her parents and the statement of the victim girl has also been recorded under Section 164 Cr.P.C. wherein she has stated that she had gone along with the petitioner on her own volition and that she was having love affair with the petitioner. He would further submit that the medical examination on the petitioner and the victim is also over and that the petitioner has been suffering incarceration from 22.11.2020. Hence, he prays for grant of bail.

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 defacto complainant aged 17 years and kept her in his house for two days and subjected her to penetrative sexual assault and thereafter, on 21.11.2020 sent her to her mother's house. He would submit that the investigation is pending and the statement of the victim girl has been recorded under Section 164 Cr.P.C. wherein she has stated that she was having love affair with the petitioner and the petitioner had committed penetrative sexual assault on her.

5. Heard the learned Counsels and perused the materials placed on record including the statement of the victim girl 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 considering the period of incarceration suffered by the petitioners, 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 Session Judge, Fast Track Mahila Court, Namakkal 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 Tiruvannamalai and report before the 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.

-sd/-

21/12/2020

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 SESSIONS JUDGE, FAST TRACK MAHILA COURT,
NAMAKKAL DISTRICT.

2 THE INSPECTOR OF POLICE,
AYILPATTY POLICE STATION,
NAMAKKAL DISTRICT.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

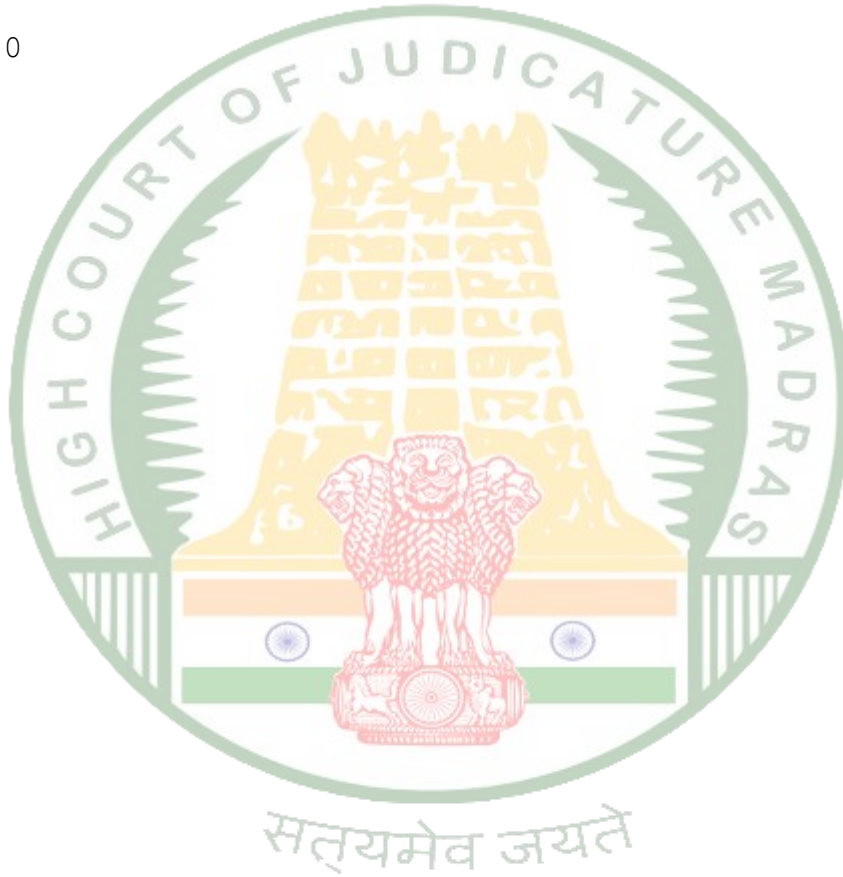
5 THE OFFICER INCHARGE,
TOWN POLICE STATION,
TIRUVANNAMALAI.

+1 CC to Mr.Karan and Uday, Advocate on payment of necessary
charges SR.NO.8496

CRL OP.20372/2020

Date :21/12/2020

TA-22/12/2020



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