

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.12.2020

CORAM :

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

CRL.O.P.No.20628 of 2020

V.Venkatesh

... Petitioner

Vs.

State rep. by

The Inspector of Police,
Bungalapur Police Station,
Erode District.

(Crime No.767 of 2020)

.... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in Crime No.767 of 2020 on the file of the respondent police.

For Petitioner : Mr.S.P.Meenakshi Sundaram

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 11.10.2020 for the offences punishable under Sections 366 of IPC, Section 5 (1), 6 of Protection of Children from Sexual Offences Act, 2012, in Crime No.767 of 2020 on the file of the respondent police, seeks bail.

2.The case of the prosecution as per the de facto complainant is that the accused had kidnapped the minor daughter of the defacto complainant and based on his complaint, the case was initially registered for offence under Section 366A IPC. Later, during the course of investigation, it came to light that the petitioner/accused had kidnapped his minor girl, tied Thali and committed penetrative sexual assault on the victim girl and thereby the offence was altered into Sections 366 of IPC, Section 5(1), 6 of Protection of Children from Sexual Offences Act, 2012.

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 petitioner and the victim are known to each other and they were friendly with each other. On coming to know their relationship, the parents of the victim had harassed her and were taking steps to give her in marriage against her choice. Therefore, the victim girl eloped and joined the petitioner and that the petitioner was under the impression that the victim girl is above 18 years and thereby, without understanding the rigors and consequences of the POCSO Act, had taken the victim girl along with him. He would submit that on coming to know about the registration of the complaint, they both surrendered before the respondent police. Subsequently, the petitioner was arrested and remanded to judicial custody on 11.10.2020 and that he has been suffering incarceration for 75 days till today. He would submit that the medical examination in respect of the petitioner and the victim girl is completed and he also understands that the statement of the victim girl has also been recorded under Section 164 Cr.P.C. wherein, she has stated that she on her own volition came along with the petitioner and married him. Hence, he prays for grant of bail to the petitioner.

4. The learned Government Advocate (Crl. Side) appearing for the respondent would vehemently oppose the petitioner had kidnapped the minor daughter of the defacto complainant and thereafter, took her to a temple and performed child marriage with her and committed penetrative sexual assault on her. He would further submit that the victim girl has been secured and handed over to her parents and the medical examination in respect of the victim girl as well as on the petitioner is over. He would fairly concede that in the statement recorded from the victim girl under Section 164 Cr.P.C., she has not stated anything as if, the petitioner has harassed 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 circumstance of the case and the fact that the statement of the victim girl has not supported the case of the prosecution 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, Magalir Neethimandram (Fast Track Mahila Court), Erode, 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 Salem 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.

7. With the above directions, this Criminal Original Petition is ordered.

-sd/-
23/12/2020

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,
MAHALIR NEEDHI MANDRAN,
(FAST TRACK MAHILA COURT),
ERODE.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE
BUNGALAPUDUR POLICE STATION,
ERODE DISTRICT.

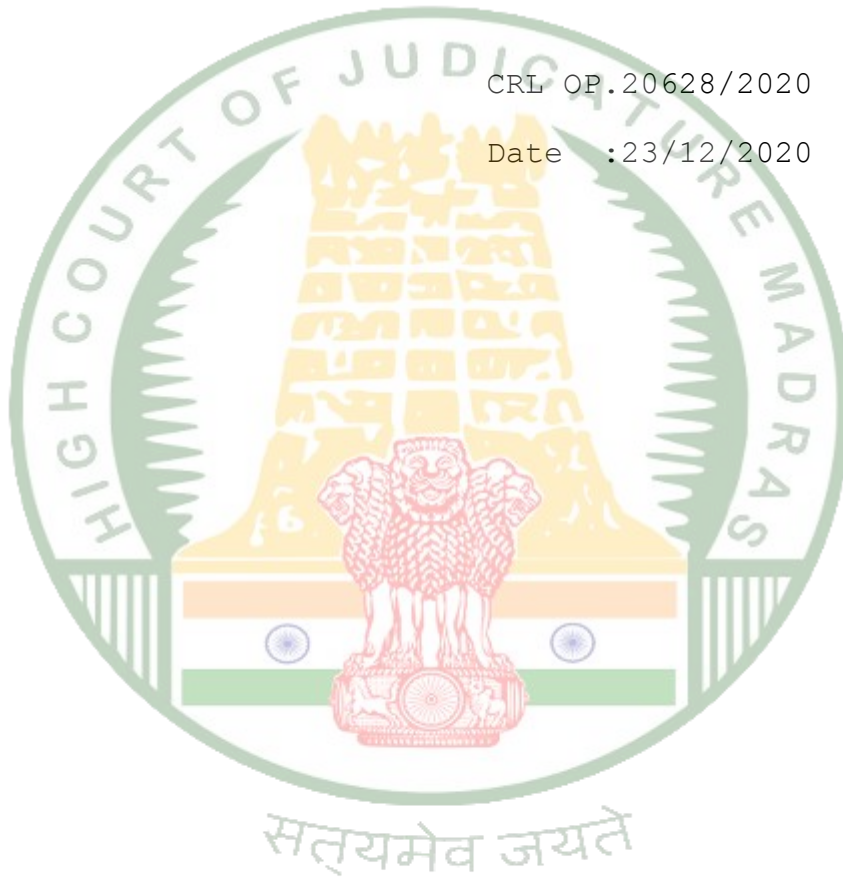
5 THE OFFICER INCHARGE
TOWN POLICE STATION, SALEM.

+1CC to M/S.S.P.MEENAKSHI SUNDARAM Advocate on payment of necessary
charges SR.No.8622

CRL OP.20628/2020

Date :23/12/2020

cs 28/12/2020



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