



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Original Jurisdiction)

Date : 22/12/2020

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PRESENT

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN

CRL OP(MD).No.14904 of 2020

Santhana Mari Selvam, ..Petitioner/Sole Accused

Vs.

State Represented by
The Inspector of Police,
All Women Police Station,
Vilathikulam,
Thoothukudi District.
Cr.No.09 of 2020.

... Respondent/Complainant

For Petitioner : Mr.A.Thiruvadi Kumar,
Advocate.

For Respondent : Mr.R.Erottuchamy,
Government Advocate (Crl.Side)

PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C.

PRAYER :-

For Anticipatory Bail in Crime No.09 of 2020 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner, who is arrayed as sole accused, apprehending arrest at the hands of the respondent police for the offences punishable under sections 5(1), 5(j)(ii) r/w 6 of Protection of Children from Sexual Offences Act, in Crime No.09 of 2020 on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution is that the accused fell in love with the victim girl, who is aged about 17 years. On the pretext of marriage, the accused had physical relationship with the minor girl. Due to which, she also got pregnant. When she was brought to the hospital only, she came to know the pregnancy. Hence, the case has been registered.



3. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl. Side) appearing for the respondent.

4. The learned counsel appearing for the petitioner would submit that the petitioner's family and the victim's family are close relatives. The petitioner and the victim girl fell in love and had physical relationship. Due to which, she also got pregnant. Now the victim is about to complete her 18 years of age in the month of 1st April 2021. He further submitted that the mother of the victim girl filed an affidavit stating that she has no objection to get marry with the petitioner herein. Therefore, the custodial interrogation does not require and seeks anticipatory bail to the petitioner.

5. The learned Government Advocate (Crl. side) submitted that the victim girl is aged about only 17 years. On the pretext of marriage, the petitioner had physical relationship with the minor girl. Thereby, she got pregnant. He also produced the statement of the victim recorded under Section 164 Cr.P.C.

6. It is seen that the petitioner is the sole accused. Admittedly, the petitioner and the victim girl fell in love and had physical relationship. Due to which, she got pregnant. The victim is going to attain her majority on 01.04.2021. The mother of the victim filed an affidavit before this Court, which reads as follows:-

'1. I submit that I am the mother of the Victim/Vijayasanthi and as such I am well acquainted with the facts and circumstances of the case. I submit that the respondent herein had registered an FIR in Crime No.09 of 2020, dated 06.12.2020 for the alleged offence U/s.5 (1), 5(j)(ii) r/w 6 of Protection of Children from Sexual Offences Act on the complaint lodged by one Vijayasanthi, D/o. Karumban as against the Petitioner/Santhana Mari Selvan.

2. I submit that the fact remains that the Petitioner and my daughter/Vijayasanthi who was born on 31.03.2003 were in love with each other and both the families had decided to solemnize their marriage as soon as my daughter/Vijayasanthi had attained majority. I submit that the fact remains that the marriage between the Petitioner and Vijayasanthi would be solemnized after my daughter attains majority as per our previous undertaking, I would humbly inform this Hon'ble Court that my daughter/Vijayasanthi is also prepared to marry the petitioner herein. I submit that I have no objection in giving my daughter/Vijayasanthi in marriage to the petitioner herein. I submit that the present Affidavit is voluntary and genuine. I submit that the present affidavit forms part and parcel of the Anticipatory Bail Petition."



7. On perusal of the statement of the victim recorded under Section 164 Cr.P.C., it is revealed that the petitioner have committed sexual assault with the victim, who is aged about 17 years, due to which, she got pregnant. Now the petitioner has also filed an affidavit before this Court that he is ready and willing to marry the victim, when she attains majority and the mother of the victim also filed an affidavit before this Court.

8. Considering the facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

9. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or his appearance, within a period of two weeks from the date of receipt of a copy of this order, before the learned Sessions Judge (Special Court for Trial of POCSO Act Cases) Thoothukudi, on condition that the petitioner shall 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 respondent Police or to the Police Officer, who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that:

(a) The petitioner shall marry the victim girl on or before second week of April 2021 and register their marriage and produce their marriage registration certificate before the respondent police on or before 30.04.2021. If the petitioner fails to marry the victim and fails to produce the marriage certificate, the anticipatory bail granted to the petitioner shall stand automatically cancelled and the respondent is directed to secure the petitioner and proceed in accordance with law;

(b) the petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the 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 once in a week i.e., every Monday at 10.30 a.m., until further orders;

(d) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(e) the petitioner shall not abscond either during investigation or trial;

(f) on breach of any of the aforesaid conditions, the learned Magistrate/ Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions



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]; and;

(g)if the accused/petitioner thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1. The Sessions Judge
(Special Court for Trial of POCSO Act Cases),
Thoothukudi.
- 2.The Inspector of Police,
All Women Police Station,
Vilathikulam,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER IN
CRL OP(MD) No.14904 of 2020
Date : 22/12/2020

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TR/SKN/SAR-II(30.12.2020) 4P 4C