

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.03.2021

CORAM :

THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

Crl.O.P.No.3179 of 2021

V.Kangamuthu

... Petitioner

Vs.

State Rep. by
The Inspector of Police,
Malliakarai Police Station,
Salem.
(Crime No.287 of 2020)

.... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in Crime No.287 of 2020 on the file of respondent police.

For Petitioner : Mr.S.Panneer Selvan

For Respondent : Mrs.M. Prabavathi,
Addl. Public Prosecutor

ORDER

(The case has been heard through video conference)

The petitioner is a sole accused. The petitioner, who was arrested and remanded to judicial custody on 09.10.2020 for the offence punishable under Sections 363, 366 of I.P.C. and Section 5 (1) r/w 6 of POCSO Act and Section 9 of Prohibition of Child Marriage Act, 2006, in Crime No.287 of 2020, seeks bail.

2. The case of the prosecution is that the victim girl is a school going student, and the petitioner is a Physical Education Teacher in the same school. Both are said to be in love and thereafter, the petitioner has kidnapped the victim girl, married her and also sexually assaulted her. Hence, the criminal case has been registered against the petitioner, he was arrested and remanded to judicial custody on 09.10.2020. Now, this petition has been filed seeking for bail.

3. The learned counsel appearing for petitioner would submit that the petitioner and the victim girl loved each other for more than two years. He would submit that the victim girl, on her own, came out of the parental house and compelled the petitioner to marry

her. The petitioner has intended to marry her only after attaining majority. In the meantime, the complaint has been filed, he was arrested and he is in jail from 09.10.2020. He would submit that he is an innocent person and he is no way connected with the offence as alleged in the complaint. He would submit that his name not found in the F.I.R. and he has been falsely implicated in the present case. Hence, he prayed to grant bail to the petitioner.

4. The learned Additional Public Prosecutor appearing for the respondent would oppose the petition on the ground that the victim girl is 15 years old, school going student, wherein the petitioner was working as a Physical Education Teacher. She would submit that he only kidnapped the victim girl, kept her in his house for more than two weeks, married her and also sexually assaulted her. She would submit that the victim has also given a statement under Sec.164 of Cr.P.C. before the Sessions Court and the investigation is almost completed. She would also submit that the final report has been filed and the matter is pending before the Special Court. She would submit that there is no previous case pending against the petitioner. However, she opposed to grant bail to the petitioner.

5. On perusal of statement of victim girl, it would show that both the petitioner and the victim girl have loved each other for more than two years, she had only compelled the petitioner to marry her and both of them lived together for nearly two weeks in the petitioner's house. Now, taking into consideration of the fact that now the investigation is completed, the final report has been filed and the matter is also taken cognizance in S.C.No.9 of 2020 and also considering the period of incarceration suffered by the petitioner from 09.10.2020, 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 Special Court for Exclusive Trial of Cases under POCSO Act, Salem**, 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 report before the trial court viz. Special Court for Exclusive Trial of Cases under POCSO Act, Salem on all hearing dates without fail;**

(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/-

02/03/2021

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 SPECIAL COURT FOR EXCLUSIVE TRIAL OF
CASES UNDER POCSO ACT, SALEM.

2 THE INSPECTOR OF POLICE,
MALLIAKARAI POLICE STATION,
SALEM.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

CC to S/O.S.PANNEER SELVAN Advocate on payment of necessary charges

CRL OP.3179/2021

Date :02/03/2021

TA-03/03/2021