

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.03.2021

CORAM :

THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

Cr1.O.P.No.3894 of 2021

Nandhakumar

... Petitioner

Vs.

State Rep. by
The Inspector of Police
All Women Police Station
Cuddalore District
(Crime No.19 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.19 of 2020 on the file of respondent police.

For Petitioner : Mr.P.K.Ilavarasan

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

O R D E R

(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 9(m) r/w 10 of POCSO Act, in Crime No.19 of 2020, seeks bail.

2. The case of the prosecution is that the petitioner and the defacto complainant are belong to the same village. On 21.08.2020 at about 08.00 p.m., the petitioner went into the house of defacto complainant and also misbehaved with a minor girl, aged about 11 years. When the same was informed to the defacto complainant, and he has questioned the same, the petitioner and some of his friends have criminally intimidated him. Hence, the criminal case has been registered against the petitioner and he was arrested and remanded to judicial custody on 09.10.2020. Now, seeking bail, the present petition has been filed.

3. The learned counsel appearing for petitioner would submit that the petitioner and the defacto complainant are belong to the same village and due to previous enmity, a false case has been implicated against him. In fact, the petitioner was assaulted by the defacto complainant and his family, for which, a complaint has been given on 22.01.2021 at about 08.00 a.m. and he was admitted in the

hospital. Thereafter, on the same day at about 02.00 p.m., the present complaint has been given as if the petitioner has criminally assaulted the minor daughter of defacto complainant by pulling her hand with sexual intent. Accordingly, the petitioner was arrested on 09.10.2020 and he is in jail for nearly five months. He would submit that now the investigation is over and the matter has been taken cognizance in S.C.No.71 of 2020 on the file of Special Court for POCSO Act, Cuddalore.

5. The learned Additional Public Prosecutor appearing for the respondent very vehemently opposed this petition on the ground that it is a case of sexual assault with a minor girl, aged about 11 years. She would submit that the petitioner has given the present complaint stating the petitioner has entered into the house of defacto complainant with a sexual intent and sexually assaulted the minor girl, when the same was questioned by the father of minor girl, the petitioner along with other accused attacked him and criminal intimidated him. Hence, the criminal case has been registered and he was arrested on 09.10.2020. She would submit that now the investigation is completed and the matter is pending for trial. Hence, she has strongly opposed the bail application.

6. On perusal of records, it could be seen that the occurrence said to have taken place on 21.08.2020 at about 08.00 p.m. at night. The allegation is that the petitioner has went to the defacto complainant's house, and his minor daughter, aged about 11 years, was asked to give food to him, and he has called her to a private place in front of their house, when she refused, he has pulled her hand to come with him. However, the minor girl has avoided it and informed the same to her father. When the father of defacto complainant had questioned the same, the petitioner has criminally intimidated him. Now, it is stated that on the very same day, the defacto complainant and their family members said to have attacked the petitioner and he has also given a complaint before the Cuddalore O.T. Police station on 22.08.2020 at about 08.00 a.m. His complaint has been received by the police and it was treated as C.S.R. and the same is pending.

7. Taking into consideration of the fact that the present complaint has been filed on 22.08.2020 at about 08.00 p.m., and from the perusal of F.I.R. and also the statement of victim girl recorded under Sec.164 of Cr.P.C., it could be seen that the petitioner said to have pulled the hands of a minor girl only and there is no allegation of aggravated sexual assault. Now, it is stated that the petitioner is in jail for nearly five months, the investigation is also over and the matter is pending for trial in S.C.No. 71 of 2020 on the file of Special Court, Exclusive Trial for POCSO Act Cases at Cuddalore. Therefore, 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 Judge Exclusive Trial for POCSO Act Cases at Cuddalore 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, after his release from prison, report before the trial court viz., Special Judge Exclusive Trial for POCSO Act Cases at Cuddalore daily at 10.30 a.m. on all hearing dates without fail 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/-

05/03/2021

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 JUDGE EXCLUSIVE
TRIAL OF POCSO CASES, CUDDALORE.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
CUDDALORE, CUDDALORE DISTRICT.

4 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

CC to M/S. P.K.ILAVARASAN Advocate on payment of necessary
charges Sr.2850

CRL OP.3894/2021

Date :05/03/2021

RVR 08/03/2021



WEB COPY