

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.03.2021

CORAM :

THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

CrI.O.P.No.5152 of 2021

1. Suresh
2. Arumugam

... Petitioners

Vs.

State Rep. by
Inspector of Police,
All Women Police Station,
Salem District.
(Crime No.2 of 2021)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail pending investigation in Crime No.2 of 2021 on the file of the respondent police.

For Petitioner : Mr. R. Thirumoorthy

For Respondent : Mrs. M. Prabhavathi,
APP

ORDER

(The case has been heard through video conference)

The Petitioners, who were arrested and remanded to judicial custody on 23.01.2021 for the offence punishable under Sections 376 of IPC r/w. Section 5(1), 5(j), 5(ii) r/w. Section 6 and 16 r/w. 17 of POCSO Act and Section 9 and 10 of Prohibition of Child Marriage Act 2006 in Crime No.2 of 2021, seek bail.

2. The petitioners are A1 and A2. The defacto complainant is the wife of the first petitioner and the second petitioner is the father of the first petitioner. The case of the prosecution is that the first petitioner and the defacto complainant loved each other, subsequently they got married against the wishes of the family members in the year 2018. At the time of marriage, she was 15 years old. Thereafter, they were living together and blessed with a child. It is an intercaste marriage. Thereafter, the first petitioner deserted the defacto complainant and now first petitioner got second marriage. Hence, the present complaint has been given and the petitioner was arrested on 23.12.2021. Now, seeking bail, the present petition has been filed.

3. The learned counsel for the petitioner would submit that it is an arranged marriage. Without knowing the fact that the defacto complainant is a minor, he got married and both of them lived together and blessed with a child. Subsequently, she left the matrimonial home and now, not willing to return back to the petitioner's house. Hence, he has filed a petition for divorce in HMOP No.29 of 2020, on the file of the Sub-Court, Mettur, and the same is pending. Only thereafter, the present complaint has been filed as if the petitioner has got second marriage, the petitioners are in jail for more than 50 days. Therefore, he prays to grant bail to the petitioners.

4. The learned Additional Public Prosecutor vehemently opposed stating that the petitioner got married the defacto complainant, who is a minor girl and they got a child. Thereafter, now, the petitioner deserted the defacto complainant and got second marriage.

5. Considering the facts and circumstances of the case, the marriage took place in the year 2018 and they lived together for two years, and the fact that divorce proceedings are pending between the parties, and also considering the period of incarceration suffered by the petitioners, this Court is inclined to grant bail to the petitioners subject to the following conditions:

(a) Accordingly, the petitioners are ordered to be released on bail on condition to execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each 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 petitioners, on release from the prison, shall report before the respondent police as and when required for interrogation;

(d) the petitioners shall not commit any offences of similar nature;

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

(f) the petitioners 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 petitioners in accordance with law as if the conditions have been imposed and the petitioners 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/-
18/03/2021

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 PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

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

4 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

CC to M/S.R.THIRUMOORTHY Advocate on payment of necessary
charges

WEB COPY

CRL OP.5152/2021

Date :18/03/2021

MN-19/03/2021