

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.03.2021

CORAM :

THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

CrI.O.P.No.5732 of 2021

Sathasivam

... Petitioner

Vs.

State rep. By

The Inspector of Police,
D5 Karuppur Police Station,
Salem Dt.

(Crime No.43 of 2021)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in Crime No.43 of 2021 on the file of Respondent police.

For Petitioner : Mr.G.Munuraj

For Respondent : Mr.M.Prabhavathi,
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 22.01.2021 for the offence punishable under Sections 366, 506(1) of I.P.C. Section 9 of Child Marriage Act, 2006 r/w Sections 5(1), 6 of POCSO Act, in Crime No.43 of 2021 on the file of respondent police, seeks bail.

2. The case of the prosecution is that the victim is a minor girl, aged about 15 years. She was kidnapped by the petitioner and got married her and also sexually assaulted her. Originally, the criminal case was registered under Girl Missing and subsequent investigation, the F.I.R. was altered into for the above said offence. Accordingly, the petitioner was arrested and remanded to judicial custody on 22.01.2021. Now, this petition has been filed seeking for bail.

3. The learned counsel appearing for petitioner would submit that the petitioner was in love with the victim girl for several years and on her own, voluntarily came out of the house and went with the petitioner. He would submit that the petitioner has only advised her and sent back to her parental house. He would submit

that there is no allegation of sexual assault and the victim girl has also given a statement under Sec.164 of CrI.P.C. before the Judicial Magistrate, which would clearly show that there is no sexual assault and the petitioner only sent her back to parental house. In the meantime, the complaint was given by the parents of victim girl and he was arrested on 22.01.2021 and he is in jail for more than three months. 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 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 submit that the petitioner has kidnapped the victim girl, aged about 15 years and also sexually assaulted her. Hence, the crime was registered against him. Now, the investigation would reveals that victim girl has given a statement under Sec.164 of Cr.P.C. before the Judicial Magistrate. She would also submit that there is no bad antecedents pending against the petitioner and the investigation is almost completed. Hence, she strongly opposed to grant bail to the petitioner.

5. On perusal of records including the statement of victim girl recorded under Sec.164 of Cr.P.C., it could be seen that the victim girl was in love with the petitioner and he said to have taken her to Tiruchengode and also married her, he has confined her in his house, thereafter, on a complaint given by the father, she was rescued by the police. Taking into consideration of the fact that it is not the case of kidnapping and it seems that the victim girl on her own, left her house and went with the petitioner, and also considering the period of incarceration suffered by the petitioner from 22.01.2021, 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, after his release from prison, shall report before the respondent police daily 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

(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/-
24/03/2021

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 SUPERINTENDENT,
CENTRAL PRISON, SALEM.

4 THE INSPECTOR OF POLICE,
D-5, KARUPPUR POLICE STATION,
SALEM DISTRICT.

+1 CC to M/S.G.MUNURAJ Advocate on payment of necessary
charges SR.NO.3957

CRL OP.5732/2021

Date :24/03/2021

TA-25/03/2021