

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.06.2021

CORAM :

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.9513 of 2021

Sundharraj

... Petitioner

Vs

The State rep by

... Respondent

The Inspector of Police,
All Women Police Station,
Cuddalore,
Cuddalore District.
(Crime No.5 of 2021)

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in Crime No.5 of 2021 pending on the file of the respondent.

For Petitioner : Mr.M.Velmurugan

For Respondent : Mr.E.Raj Thilak
Government Advocate (Crl. Side)

ORDER

(The case has been heard through video conference)

The petitioner, who was arrested and remanded to judicial custody on 29.04.2021 for the offence punishable under Sections 5(I) (ii) and 5(I) read with Section 6 of POCSO Act in Crime No.5 of 2021 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that on 29.04.2021, the victim girl was kidnapped by the accused and he also sexually assaulted the minor victim girl aged 17 years.

3. The learned counsel for the petitioner would submit that the petitioner is aged about 21 years and the victim girl aged about 17 years, she supposed falling in love with the petitioner. Only on instruction of the victim girl, he eloped and married the victim girl. Now, the victim girl got 4 ½ months of pregnancy. Further, he would submit that the petitioner has filed an affidavit stating that the petitioner is ready and willing to marry the victim girl when ever she attains the majority. The father of the victim girl lodged the present complaint. Now, the petitioner is in incarceration of imprisonment from the date of arrest i.e., on 29.04.2021.

4. The learned Government Advocate (CrI.Side) would submit that the victim girl aged about 17 years was kidnapped by the petitioner and he sexually assaulted her. Due to which, she got pregnant. The investigation is pending. Hence, he vehemently opposed to grant bail to the petitioner.

5. It is seen that the petitioner is the sole accused. The petitioner and the victim girl fell in love and had physical relationship. Due to which, the victim girl got pregnancy of 4 ½ months. The petitioner filed an affidavit, the relevant portion is extracted here under :

" I submit that I am always ready and willing to marry the victim girl after she attains the majority age of 18 years. I submit that my parents and victim parents are compromised each other, they are ready to arrange marriage between the victim girl and myself the victim girl is my close relative and neighbour and belong to same community. Hence I undertake to marry the victim girl after she attains the majority age of 18 years and register the same, produce the certificate of marriage either before the court or the Investigating Officer. Hence, it is just and necessary to grant bail to me in the above case."

5. Considering the above facts and circumstances of the case and also considering the period of incarceration, this Court is inclined to grant bail to the petitioner, subject to the following conditions:

(a) The date of birth of the victim girl is 26.10.2004 and the petitioner shall marry the victim girl within a period of one week from the date of attainment of majority. Thereafter, the marriage shall be registered before the concerned Registrar and the marriage registration certificate shall be produced before the respondent police immediately, failing which the bail granted by this Court shall stand automatically cancelled and the respondent police is directed to secure the petitioner and proceed to in accordance with law.

[b] the petitioner is ordered to be released on bail on condition that he shall execute his own bond for a sum of Rs.10,000/- (Rupees Ten thousand only) before the Superintendent of the concerned prison;

[b] thereafter, the petitioner shall execute two blood related sureties for a sum of Rs.10,000/- (Rupees ten thousand only) each, before the concerned Magistrate within a period of fifteen days from the lifting of lock down and commencement of regular functioning of the Court below, failing which the bail granted by this Court shall stand dismissed.

[c] 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.

[d] the petitioner shall report before the respondent police daily at 10.30 a.m., for a period of four weeks and thereafter, as and when required for interrogation.

[f] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[g] the petitioner shall not abscond either during investigation or trial.

[h] 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 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]**.

[i] 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/-

10/06/2021

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 SESSIONS JUDGE (SPECIAL COURT OF POCSO ACT), 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.M.VELMURUGAN Advocate on payment of necessary charges

CRL OP.9513/2021

Date :10/06/2021