

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.05.2021

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.No.9700 of 2021

Settu

... Petitioner

Vs.

State represented by

The Inspector of Police,
Kitchipalayam Police Station,
Rasipuram,
Salem District.

Crime No.244 of 2015.

... Respondent

PRAYER: Criminal Original petition has been filed under Section 439 of Cr.P.C, prayed to enlarge the petitioner on bail in connection with the Spl.SC.No.41 of 2019 pending o the file of the Sessions Judge, The Special Court for exclusive trial under POCSO Act.

For Petitioner : Mr.R.Nalliyappan

For Respondent : Mr.A.Gopinath
Government Advocate (Crl. side)

ORDER

The petitioner who was arrested and remanded to judicial custody on 17.02.2021 for the offences under Sections 363, 366 (A), Section 9 of Prohibition of Child Marriage Act r/w 6 of POCSO Act 2012 in Crime No.244 of 2015 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the petitioner herein alleged to have kidnapped the minor daughter of the defacto complainant on 22.05.2015 and married her on 24.05.2021 and in course of that the petitioner herein alleged to have sexual intercourse with her. Later on the complaint of the defacto complainant who is the father of the victim girl, she was secured from the custody of the petitioner on 03.07.2015. The petitioner submits that he has not known about the date of hearing before the trial Court and the Court below has issued non bailable warrant. Hence immediately the petitioner herein surrendered within five days and filed a bail application in Crl.M.P.No.280 of 2021 and the same was dismissed on 11.05.2021.

3. The learned counsel for the petitioner submit that the petitioner is innocent and not guilty of any offence and he has been falsely implicated in this case. Therefore, he prays to grant bail to the petitioner.

4. The learned Government Advocate (Crl.Side) concedes that initially NBW was issued on 16.02.2018 and executed on 21.01.2019 before the Sessions Judge, the Special Court for exclusive trial under POCSO Act. Thereafter, due to non-appearance before the Court below NBW was issued on 11.02.2021 and executed on 22.02.2021. Trial was commenced in Spl.SC.No.41 of 2019 and there are totally 23 prosecution witnesses totally and in that two witnesses have already been examined. The case was posted for hearing on 09.06.2021 for cross-examining of LW's 7, 10 and 11. Therefore, he strongly objects to grant bail to the petitioner.

5. Considering the period of incarceration suffered by the petitioner and also the present COVID-19 pandemic situation, this Court is inclined to grant bail to the petitioner subject to the following conditions:

(a) the petitioner shall execute own bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) before the Superintendent of Central Prison, Salem, in which the petitioner is confined and on such execution the petitioner shall be released from prison;

(b) (i) After the lockdown restrictions are raised and normal time is restored, the restrictions are totally raised, the petitioner shall execute own bond for Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum amount each to the satisfaction of the Sessions Judge, the Special Court for exclusive trial under POCSO Act, Salem. The same shall be executed within a period of one month from the date the lockdown restrictions are raised.

(ii) If for any reason, the petitioner fails to co-operate with the trial or absconding, the Sessions Judge, the Special Court for exclusive trial under POCSO Act, Salem, can pass orders and thereby cancel the bail granted by this Court as per the directions of the Hon'ble Supreme Court reported in P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560]; and thereby secure the petitioner and proceed the proceed with the trial during the incarceration of the petitioner till the conclusion of the trial.

(iii) While executing the bond, the sureties shall furnish proof of identity and the sureties shall affix their photographs and left thumb impression in the surety bond and the learned Judge shall obtain a copy of their Aadhar card or Voter ID or Driving license or Bank pass Book to ensure their identity to the satisfaction of the Sessions Judge, the Special Court for exclusive trial under POCSO Act, Salem.

(c) After the lockdown restrictions are raised, normal time is restored, the petitioner shall abide by the following conditions imposed by this Court. He/she shall not interfere, influence or cause hindrance to the pending investigation.

(d) He/she shall not influence, threaten or coerce the witness either during investigation or trial;

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

(f) 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]; and;

(g) if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

-sd/-

27/05/2021

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,
THE SPECIAL COURT FOR EXCLUSIVE TRIAL UNDER POCSO ACT,
SALEM.

2 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

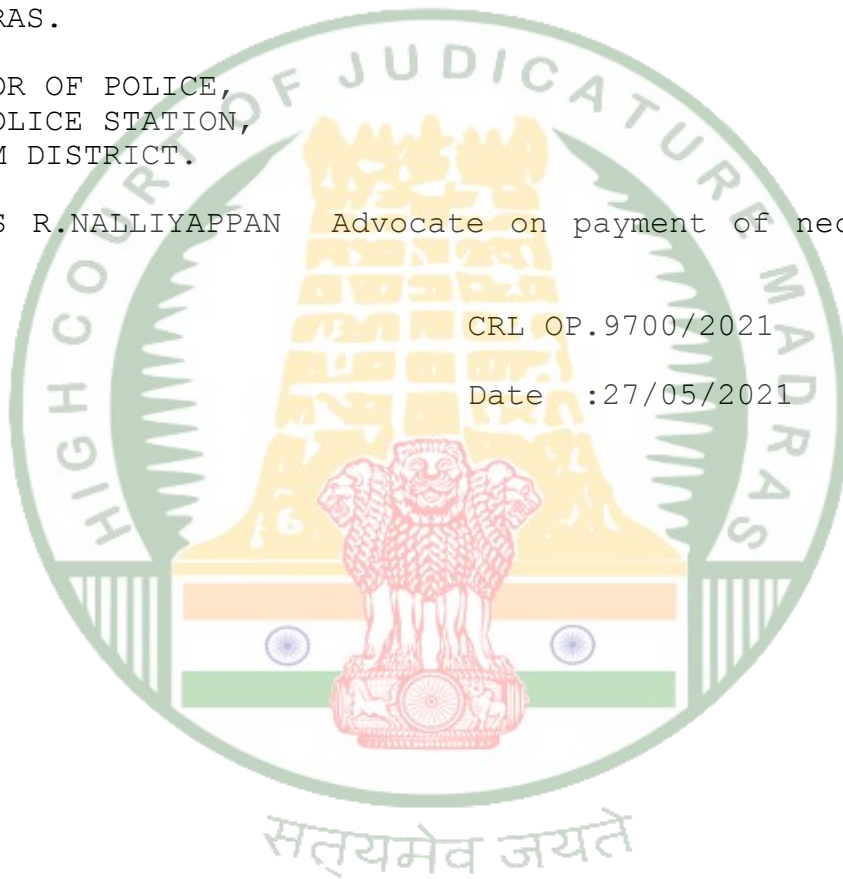
4 THE INSPECTOR OF POLICE,
KITCHIPALAYAM POLICE STATION,
RASIPURAM, SALEM DISTRICT.

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

CRL OP.9700/2021

Date :27/05/2021

MK:31/05/2021



WEB COPY