

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2021

CORAM:

THE HON'BLE MR. JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.10030 of 2021

Soundarajan

... Petitioner

Versus

State represented by:

The Sub Inspector of Police,
All Women Police Station, Omalur,
Salem District.

(Crime No.3 of 2021)

.... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Cr.P.C, prayed to enlarge the petitioner on bail in Crime No.3 of 2021 on the file of All Women Police Station, Omalur, Salem District.

For Petitioner : Mr.M. Mohamed Riyaz
for Mr.P. Kalimuthu

For Respondent : Mr.E.Raj Thilak
Counsel for Government of Tamil Nadu
(Crl. Side)

ORDER

The petitioner, who was arrested on 20.04.2021 and remanded to judicial custody for the offences punishable under Sections 5(1) and 6 of POCSO Act, 2012 in Crime No. 3 of 2021 on the file of All Women Police Station, Omalur, seeks bail.

2. The case of the prosecution is that the victim girl who was studying 12th standard had fallen in love and had physical relationship with the petitioner. Thereafter, the petitioner had refused to marry her. Hence, the de-facto complainant who is the father of the victim girl lodged a complaint before the respondent police.

3. The learned counsel for the petitioner submitted that the petitioner is no way connected with the alleged offence and he has been falsely implicated in this case. The petitioner has been in jail from 20.04.2021. He further submitted the petitioner is ready and willing to marry the victim girl as and when the victim girl attains the age of 18 years as the victim girl Sharmila's date of birth is 21.03.2004. Therefore, he prays to grant bail to the petitioner.

4. The learned counsel appearing for Government of Tamil Nadu (Cr1. Side) submitted that the investigation is yet to be completed and the 164 Cr.P.C. statement of the victim girl has to be recorded by the learned Judicial Magistrate. Therefore, he vehemently opposed for grant of bail to the petitioner.

5. Considering the rival submissions and on perusal of the materials it is not in dispute that the petitioner and the victim girl were in love with each other and their relationship had been known to everybody in their village and hence, at the instance of the village head, talks were held for marriage. The petitioner's parents have agreed for engagement and sought two years time for marriage, but they were not certain with specific date and they failed to do so, there was some dispute. Thereafter, the victim girl's father had lodged a complaint before the respondent police. They attempted to make reconciliation for marriage but it could not be done.

6. Now, the learned counsel for the petitioner on instructions submitted that the petitioner's parents as well as the petitioner are agreeable for the marriage and they would file an affidavit in support of the same. The victim girl is yet to attain the majority and after both the petitioner as well as the victim girl attain the majority, they would marry each other. The petitioner as well as the victim girl are lovers. The victim girl in her 164 Cr.P.C. statement, had clearly stated that the petitioner and the victim girl had fallen in love with each other. After attaining the majority by the victim girl, the relationship between the petitioner as well as the victim girl cannot be denied and the petitioner is also ready and willing to marry the victim girl as and when she attains the age of 18.

6. In view of the above and also considering the period of incarceration suffered by the petitioner and 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 his own bond for a sum of Rs.10,000/- (Rupees Ten thousand only) before the Superintendent, Central Jail, Salem, in which the petitioner has been confined on his release;

(b) the petitioner shall execute two sureties for a sum of Rs.10,000/- (Rupees ten thousand only) each, before the Special Court for Exclusive Trial of Cases under POCSO Act, Salem, within a period of 15 days from the date of lifting of lockdown and commencement of regular functioning of Court below, failing which the bail granted by this Court shall stand dismissed automatically;

(c) 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;

(d) On release the petitioner shall report before the Sub Inspector of Police, All Women Police Station, Omalur, Salem District, daily at 10.30 a.m., for a period of two weeks and thereafter as and when required for interrogation.

(e) the petitioner shall not commit any offences of similar nature;

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

(g) the petitioner shall not tamper with evidence or witness 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.

(ii) the petitioner shall not visit or go near the home of the victim, till the completion of Trial.

(iii) After normal functioning of the Court, while executing sureties, the petitioner and the parents of the petitioner to file an affidavit that the marriage between the petitioner and the victim girl would be conducted and they would not object for the same in any manner.

6. With the above directions, this Criminal Original Petition is ordered.

-sd/-
08/06/2021

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 SPECIAL COURT FOR
EXCLUSIVE TRIAL OF CASES UNDER POCSO ACT,
SALEM DISTRICT.

2 THE SUPERINTENDENT,
CENTRAL JAIL, SALEM.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUB INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
OMALUR, SALEM DISTRICT.

CC to M/S.P.KALIMUTHU Advocate on payment of necessary charges

CRL OP.10030/2021

cs 09/06/2021

Date :08/06/2021

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