

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
24.08.2021	26.08.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO. 14439 OF 2021

Shekhinah Shawn

.. Petitioner

- Vs -

The State
rep. By its
Inspector of Police
W-4, All Women Police Station
Kilpauk, Chennai.
CRIME NO.06 OF 2021

.. Respondent

Criminal Original Petition filed u/s 439 Cr.P.C. praying this Court to enlarge the petitioner on bail in Crime No.6 of 2021 on the file of the respondent.

For Petitioner : Mr. B.Vijay

For Respondent : Mr. A.Gopinath, GA (Crl. Side)

ORDER

The petitioner stands implicated for the offences u/s Section 10 r/w 9 (1), 9 (m) 9 (n) and 17 of the Protection of Child from Sexual Offences Act, 2012 pursuant to the complaint lodged by the defacto complainant in Crime No.6 of 2021 on the file of the respondent.

2. This is the second bail application filed by the petitioner. The first bail application, at the instance of the petitioner was dismissed as withdrawn vide order dated 22.6.2021.

3. It is the case of the prosecution that the petitioner is the sister of the defacto complainant and the aunt of the victim girl. As the defacto complainant was a renowned artist in the film domain, she had left her daughter, viz., the victim girl, in the custody of her mother and the petitioner, who is the aunt of the victim girl, was in

the habit of taking the victim girl to her house. It is the further case of the prosecution that the petitioner, though originally belong to Hindu religion, but had converted herself to Christianity along with her husband and son. Pursuant to the said conversion, the petitioner used to partake in the religious mass prayers.

4. It is the further case of the prosecution that as the defacto complainant was on the move constantly due to her avocation, the victim girl was taken to the house of the petitioner, where she was physically abused by the son of the petitioner and also her husband. It is the further case of the prosecution that under guise of taking the victim girl to mass prayers, the victim girl was subjected to physical abuse by the pastor, who was in the forefront of conducting the mass prayers. It is the further case of the prosecution that though the physical and sexual abuse meted out to the victim girl was brought to the notice of the petitioner, however, the petitioner was unmindful of the said physical and sexual abuse meted out to the victim girl and had brushed aside the complaint made by the victim girl about the acts perpetrated on her by the petitioner's son, her husband and also the pastor. It is the further case of the prosecution that the petitioner not only brushed aside the complaints made by the victim girl, but had asked the victim to keep quiet and not to speak about the said acts to any person and, thereby, abetted in the commission of the crime. It is the further case of the prosecution that the victim girl, after considerable effort made out of the house of the petitioner and with great difficulty reached the abode of her mother and communicated the abuse faced by her to her mother, which resulted in the resultant complaint filed before the respondent leading to the registration of the case.

5. Mr.Vijay, learned counsel appearing for the petitioner submitted that the case projected by the prosecution is an utter falsehood and has been filed by the defacto complainant only to make the petitioner submit to the demands of the defacto complainant to part with the family property in favour of the defacto complainant. It is the further submission of the learned counsel for the petitioner that the petitioner is the mother of a small child which is still in mother feeding stage and by the act of the defacto complainant to wreak vengeance against the petitioner for the purpose of usurping the family property, the safety, security and health of the new born child has been greatly jeopardized. It is the further contention of the learned counsel for the petitioner that the petitioner has been under incarceration for more than 125 days and the charge sheet having been filed by the respondent, there could be no apprehension on the part of the respondent with regard to the tampering of witness by the petitioner. It is the further submission of the learned counsel for the petitioner that this Court, taking into consideration the fact that the petitioner is a lady, who is required to take care of her child, still in the mother feeding stage and the charge sheet having been filed, the involvement of the

petitioner in threatening or intimidating acts against the witnesses having been foreclosed, as the statements of the witnesses having been recorded by the investigating agency, this Court may consider the case of the petitioner sympathetically for enlargement on bail.

6. Per contra, learned Government Advocate (Crl. Side) appearing for the respondent, while placed the statement of the victim recorded u/s 164 Cr.P.C. submitted that not only the victim had categorically stated about the involvement of A-1 to A-3 in committing sexual abuse on the victim, but has also clearly spoken about the fact that the complaints of the victim as to the plight face by her to the petitioner, who is arrayed as A-4 in the crime, fell in deaf ears and the petitioner did not take any steps to safeguard the victim. Rather, the petitioner had merely asked the victim not to divulge anything to any third party and that she had not taken any steps to see to it that the predators, viz., A-1 to A-3 kept their hands off the victim. It is the further submission of the learned Government Advocate that though the petitioner claims that she is a mother of a mother feeding child, yet she had not taken any steps to safeguard the victim, who is equally her child, either from the predatorial onslaught of her son, her husband and also the pastor. It is the further submission of the learned Government Advocate that the statement of the victim recorded u/s 164 Cr.P.C. reveals a very sorry and pathetic plight of the victim at the hands of A-1 to A-4 and the abuse that she had endured only to escape from their clutches and reach her mother with great difficulty and strain. On the strength of the statement of the victim coupled with the acts of A-1 to A-3, which was not addressed to humanly by the petitioner/A-4, clearly reveals that the petitioner had abetted the acts of A-1 to A-3 and, therefore, this Court may not show any leniency on the petitioner by acceding to her request for enlargement on bail.

7. This Court paid its unceremonious attention to the submissions advanced by the learned counsel on either side and also perused the materials available on record, more particularly the statement of the victim recorded u/s 164 Cr.P.C.

8. A perusal of the statement of the victim recorded u/s 164 Cr.P.C. reveals that the dangers of religious fanaticism is writ large in the said statement. Even prudent persons, under the cloud of religion, for ulterior motives and wrongful gains yield to the myths of the religious persons, who, under the guile of religion, tear apart the lives of numerous persons and push them to the oblivion. The tentacles of such religious persons, in the present case, the pastor, who is also arrayed as an accused, had preyed upon the young victim with lustful vengeance that the victim had not only been sexually abused, but also psychologically abused to such an extent that even escaping from the clutches of the said individuals had taken a toll on the life of the victim, as is evident from the statement of the victim recorded u/s 164 Cr.P.C. The statement

further reveals that the victim had clearly spoken about the acts of A-1 to A-3 and also the act of A-4 in not heeding to the tears of the victim to save her from such physical and psychological abuse at the hands of A-1 to A-3.

9. Even the prudent and sane persons, both high and low in the pyramidal structure of life, are shred to pieces due to their religious fanaticism, by prostrating before the self-styled religious heads, without heeding to their common sense and sense prevailing upon them that the self-styled religious heads are only after their riches and rags and are least concerned about their attaining salvation. The insane attitude of the masses towards religion is the root cause of much of the sexual abuse acts in the society, which has gained deep roots in the society, weeding which has exhibited itself to be a very difficult task, both for the common man and also for the law enforcing agency.

10. The victim, who is equally a child as defined under the POCSO Act, has not been taken proper care of by the petitioner, who had taken the victim out of the safety of her grandmother, and merely shedding crocodile tears, the petitioner has come before this Court to lament that her child, who is still at the mother feeding stage, has not got its share from the world and, therefore, she should be considered for enlargement on bail, atleast for the sake of the child. The petitioner has to realise that "what is sauce for the goose is sauce for the gander". When the petitioner is more concerned of the child, which she had carried in her womb, she had utterly no sympathy for the victim, who is equally her child, through her sister, whom she is supposed to have taken care of like a mother, but had allowed her to be allegedly abused by persons, viz., her husband, her son and a pastor, who is revered to be a messenger of God, which is beyond the comprehension of this Court. The petitioner cannot enlist any sympathy from this Court at this point of time and, any such sympathy, if considered by this Court, could only be termed to be a misplaced sympathy, which this Court is not ready to offer.

11. For the reasons aforesaid, this Court is of the considered opinion that the prayer for bail, as sought for by the petitioner, cannot be considered at this point of time and, accordingly, the petition fails and the same is dismissed.

-sd/-

26/08/2021

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 INSPECTOR OF POLICE,
W-4, ALL WOMEN POLICE STATION,
KILPAUK, CHENNAI

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 CC to M/S B.VIJAY Advocate on payment of necessary charges
SR.NO. 9228

CRL OP.14439/2021

Date :26/08/2021

JPA 02/09/2021