

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
15.09.2021	20.09.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NOS.15185, 15929 & 16339 OF 2021

AND

CRL. M.P. NO. 8763 OF 2021

S.Veerabharathi Devi

.. Petitioner in Crl. OP 15185/21

M.G.Ashok

.. Petitioner in Crl. OP 15929/21

Vimalraj

.. Petitioner in Crl. OP 16339/21

- Vs -

1. State by

The Inspector of Police

All Women Police Station

Madipakkam.

.. Respondent in all the petitions

2. J. Angayarselvi @ J.Selvi

.. Intervenor

Crl. O.P. Nos.15185 and 15929 of 2021 filed u/s 438 Cr.P.C. praying this

Court to grant anticipatory bail to the petitioners in connection with Crime No.4 of 2021 on the file of the respondent.

Crl. O.P.No.16339 of 2021 filed u/s 439 Cr.P.C. praying this Court to enlarge the petitioner on bail in connection with Crime No.4 of 2021 on the file of the respondent.

For Petitioners : Mr. Karthik, SC, for
M/s. T.S.Gopalan & Co. in Crl. OP 15185/21
Mr.I.Abrar Mohamed Abdullah in
Crl. OP Nos.15929 & 16339/21

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

For Intervenor : Mr. R.Ramesh

COMMON ORDER

The present criminal original petitions have been filed by the petitioners, seeking enlargement on bail in connection with the offences u/s 11 (iii) r/w 12 of POCSO Act, 2012 and 294 (b) and 506 (i) IPC, in Crime No.4 of 2021 on the file of the respondent. For the sake of clarity, the petitioners in Crl. O.P. Nos.15185, 15929 and 16339 of 2021 shall be referred to as P-1, P-2 and P-3.

2. The petitioner in Crl. O.P. No.15185/21 is the sister of the petitioner in Crl. O.P. No.16339/21 and the petitioner in Crl. O.P. No.15929/21 is the friend of the petitioner in Crl. O.P. No.16339/21. The petitioners in Crl. O.P. Nos.15185 and 16339/21 are relatives of the defacto complainant. It is the case of the prosecution that under the guise of enabling the defacto complainant's daughter get a chance to act in films, the P-1 and P-2 approached the victim and they being the relatives of the victim, were allowed access to the victim. However, P-2

approached the victim when she was alone in her house very many times during the year 2020 and, thereafter, in 2021 and lured the victim to enable him to come inside the house. After gaining access inside the house, P-2 gave the victim chocolate and some tablet for consumption, which initially the victim girl refused. But, at the insistence of P-2, the victim girl partook the tablet which rendered her dizzy and at that time, utilising the condition of the victim, P-2 had shown the victim obscene videos and photos, which was resisted by the victim. Though the victim had told that she would be informing the said act to her mother, however, due to the veiled threats meted out by P-2 towards the members of her family, the victim refrained from speaking about the act of P-2.

3. It is the further case of the prosecution that thereafter, during the year 2021, more especially during February, 2021, P-2, accompanied by P-3, came to the house of the victim, however, the victim did not yield to the pressure of letting them in and kept the door locked. During that time as well, P-2 and P-3 had shown obscene photos and videos to the victim and P-2, in fact, had caught hold of the hand of the victim through the bolted door and P-3 had tried to grope over various parts of the victim's body and once the victim raised alarm, P-2 and P-3 went away from her house. It is the further case of the prosecution that on

26.7.21, when P-1 came to the house of the victim, the victim had let her in on account of her being a relative and also being a lady, but utilising the said opportunity, P-2 and P-3 entered into the house of the victim and, thereafter, P-1 abused the victim and P-2 caught hold of the victim's hand and, thereafter, the victim was pushed into the bedroom, where she was manhandled by P-1 to P-3 and P-3 attempted to tear the robes of the victim and when the victim writhed in pain and raised alarm, P-1 to P-3 left the house of the victim warning of dire consequences to the members of the victim's family. Thereafter, on the victim intimating the above occurrence to the defacto complainant, the criminal machinery was set in motion by the defacto complainant lodging a complaint against P-1 to P-3 before the respondent.

4. Learned senior counsel appearing for P-1 submitted that the present complaint given by the defacto complainant is only a counter blast to the complaint already given by P-1 against her husband and the brother of the defacto complainant. It is the submission of the learned senior counsel that the complaint of P-1 dates back more than six months against her husband and the brother of the defacto complainant regarding acts under the POCSO Act perpetrated against her daughter and also against P-1. It is the further

submission of the learned senior counsel that the day on which the occurrence is alleged to have taken place, the petitioners were before the Child Welfare Committee on the directions of the POCSO Court based on the private complaint filed u/s 156 (3) Cr.P.C., which could very well be ascertained by calling for the video recordings, which would clearly establish that the case against the petitioners is nothing but a counter to the case filed by P-1 against her husband and the brother of the defacto complainant. It is the further submission of the learned senior counsel that there is no positive material from the mouth of the victim to show that P-1 was also involved in the act along with the other petitioners and, therefore, there would be no impediment for this Court to grant anticipatory bail to P-1.

5. Learned counsel appearing for P-2 and P-3 submitted that P-2 and P-3 were never near the house of the victim on the alleged date and time of occurrence, as would be evident from the videos that are available in the office of the Child Welfare Committee. It is the further submission of the learned counsel that only to wreak vengeance against P-1 with regard to her complaint against her husband and the brother of the defacto complainant, the defacto complainant was utilised by her brother to foist a false case against P-1 to P-3. It

is the further submission for the learned counsel for P-2 and P-3 that even the court below had ordered registration of case and investigation in the private complaint filed by P-1 u/s 156 (3) Cr.P.C. However, for reasons best known, the respondent had not taken any steps to investigate that aspect of the case. In view of all the above lacunae, learned counsel prays that petitioners be enlarged on bail on any stringent conditions that may be imposed by this Court.

6. Learned Government Advocate (Crl. Side) submitted that based on the complaint of the defacto complainant, in which there is a categorical averment attracting the provisions of the POCSO Act, the crime was registered against the petitioners. It is the further submission of the learned Government Advocate that the complaint filed by P-1 did not attract the provisions of POCSO Act, which resulted in the law enforcing agency not entertaining the complaint. It is submitted that the allegation made against the petitioner are very grave in nature and, therefore, he vehemently opposed grant of bail to the petitioners.

7. Intervening application has been filed by the defacto complainant seeking to intervene in the present petitions and submit contentions against the enlargement of the petitioners on bail. **In view of the nature of the case**

involved, this Court permits the intervenor to intervene and, accordingly, the intervening petition is allowed.

8. Learned counsel appearing for the intervenor submitted that the nature of allegation made against the petitioners are very grave and that P-1 and P-2, being relatives of the victim, have not only manhandled the victim, but have also given her mental harassment by imposing her to sexual torture, which has been narrated by the victim to the defacto complainant. It is the submission of the learned counsel for the intervenor that the intervenor, being the mother of the victim, would not in any way jeopardize the life of the victim, who is her blood daughter and, therefore, the present case of the petitioners relating to the case against her brother is only for the purpose of wriggling out of the present case and, therefore, vehemently objected to grant of bail to the petitioners.

9. This Court gave its anxious consideration to the submission advanced by the learned counsel on either side and perused the materials available on record.

10. A perusal of the statement of the victim recorded u/s 164 Cr.P.C. reveals that P-2 and P-3 have sexually abused the victim on many occasions and

for the fear of her mother, the victim, at the earliest point of time, had not divulged the details about the act of the said predators to the defacto complainant. It is further evident from the said statement that P-1 and P-2 are, in fact, related to the victim. Gone are the days when the children could be safely left at the hands of relatives for the fear of outsiders causing harm to them. The psychological abuse caused by such persons is amply 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 P-1 to P-3 and inspite of P-1 and P-2 being related to the victim, they have not spared the victim of the sexual abuse.

11. The victim, who is equally a child as defined under the POCSO Act, has not been treated properly by P-1 and P-2, who are related to the victim. The main plank of argument advanced on behalf of P-1 and P-2 is that the complaint by the defacto complainant is only a counter blast to the complaint given by P-1 against her husband and the brother of the defacto complainant, which is even earlier in point of time. Though such a stand is taken by the petitioners, however, this Court is not expressing any opinion on the said issue, but mere complaint by the petitioners, which is earlier in point of time cannot be a ground to say that the present complaint by the defacto complainant is only a counter blast action,

as it is to be pointed out that no mother would put her daughter in a jeopardizing situation, that too, under the garb of sexual abuse, merely to save her brother from a criminal action instituted against him. When P-1 alleges that she and her daughter have been sexually abused by her husband and the brother of the defacto complainant for which she is said to have given a complaint and wants the court to take cognizance of the said issue, it does not lie in the mouth of the P-1 and the other petitioners to contend that they have not perpetrated the acts as alleged. The petitioner cannot enlist any sympathy from this Court at this point of time and, any such sympathy, merely on the basis of a prior complaint, alleged to have been made by the petitioners, if considered by this Court, could only be termed to be a misplaced sympathy, which this Court is not ready to offer. There is a categorical deposition u/s 164 Cr.P.C. from the victim that she had been sexually abused by the petitioners. That being the case, without proper investigation, which is at the threshold, leaving the petitioners out on bail would not be conducive to the conduct of investigation and also to the safety and security of the defacto complainant and the victim, when the victim had categorically pointed a finger on the petitioners to the effect that they had threatened the victim with dire consequences if she divulges their evil acts to the defacto complainant. Therefore, the investigation being at the nascent stage,

enlarging the petitioners on bail would be detrimental to the investigative process.

12. Insofar as the contention pertaining to the petitioners not being at the place of occurrence at the relevant point of time, as at that point of time, they claim that they were before the office of the Child Welfare Committee is concerned and to substantiate their case, the video footage at the office of the Child Welfare Committee is sought to be summoned and looked, which would absolve them of their complicity, however, it is to be pointed out that this Court is not to conduct a roving enquiry as to the availability of the petitioners at the place of occurrence at the relevant point of time. It is for the investigating agency to investigate the matter on the basis of the statement of the petitioners and other witnesses and also the victim and it is for the petitioners to establish their case in accordance with law and this Court cannot go beyond its jurisdiction to call for materials, which are not necessary for arriving at a subjective *prima facie* satisfaction at this point of time. This Court is not expressing any opinion on the claim of the petitioners and it is for the petitioners to prove their presence at a different place at the time of occurrence through proper materials before the investigating agency. Giving any finding or direction at this point of time would

be entirely outside the jurisdiction of this Court hearing a petition u/s 438 or 439 Cr.P.C. as the case may be.

13. This Court is merely called upon to assess the *prima facie* nature of the materials, to arrive at a subjective satisfaction as to whether the materials do absolve the petitioners of the complicity in the crime. This Court is not required to assess all the evidence before it to arrive at a decision relating to grant of bail to the petitioners. On the materials placed before this Court coupled with the statement of the victim recorded u/s 164 Cr.P.C., it is amply evident that there are materials, which, *prima facie*, point a finger on the petitioners as perpetrators of the offence and such being the case, it would not be prudent for this Court to enlarge the petitioners, at this point of time, on bail, pending investigation by the respondent.

14. For the reasons aforesaid, this Court is not inclined to accede to the prayer of the petitioners for enlargement on bail and, accordingly, all the petitions are dismissed.

20.09.2021

Index : Yes / No
Internet : Yes / No
GLN

M.DHANDAPANI, J.

GLN

To

1. The Inspector of Police
All Women Police Station
Madipakkam.
2. The Public Prosecutor
High Court, Madras.



**PRE-DELIVERY ORDER IN
CRL. O.P. NO. 15185, 15929
& 16339 OF 2021**

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