

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.01.2021

CORAM :

THE HON'BLE MR. JUSTICE V. BHARATHIDASAN

Crl.O.P.No.18493 of 2020

Prabu Devan

... Petitioner

Vs.

State Rep. by
The Inspector of Police,
Kunnam Police Station
Kunnam, Perambalur District.
(Crime No.1081 of 2020)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 438 of Criminal Procedure Code to enlarge the petitioner on bail in the event of his arrest in Crime No. 1081 of 2020 pending investigation on the file of the Respondent.

For Petitioner : Mr.K.Selvarangan

For Respondent : Mr.S.Karthikeyan
Addl. Public Prosecutor

ORDER

(The case has been heard through video conference)

The petitioner is arrayed as a sole accused. He apprehends arrest at the hands of respondent police for the offence punishable under Girl Missing and altered to Sections 366(A) of I.P.C. @ 5(1), 6 of POCSO Act, 2012 in Crime No.1081 of 2020 and now, he has filed the above petition seeking for anticipatory bail.

2. The case of the prosecution is that the victim girl is a minor, aged about 17 years, and her father found her missing. Hence, he has given a complaint before the respondent police. Based on that, the criminal case has been registered against the petitioner and thereafter, on investigation, it is found that the petitioner has kidnapped the minor girl and sexually assaulted her. Hence, the crime was altered into Section 366 (A) of I.P.C. @ 5(1), 6 of POCSO Act, 2012. In the said circumstances, the present petition has been filed seeking for anticipatory bail. Now, it is stated that the victim girl was rescued.

3. The learned counsel appearing for petitioner would submit that the petitioner and the victim girl loved each other and victim girl on her own, has left her house and went to the petitioner's house, and he has asked the victim girl to go to her parental house, but she said to have gone to Tiruppur and wherein,

the respondent police had rescued victim girl and sent her to home. He would submit that the petitioner has not sexually harassed the victim girl and since he is willing to marry the victim girl, she is a minor, the petitioner is waiting for the victim girl to attain majority. He would also submit that as directed by this court, earlier, he has also filed an undertaking affidavit to that effect. Now, the parents of the petitioner also filed an undertaking affidavit stating that after the victim girl attains majority, they will get her married to the petitioner. Hence, he prays to grant anticipatory bail to the petitioner.

4. The learned Additional Public Prosecutor would submit that victim girl is a minor, aged about 17 years and the petitioner has only kidnapped the minor girl. Thereafter, a complaint was given by the victim girl's father and the statement was recorded from the victim girl under Sec.161 of Cr.P.C. Now, the investigation is almost over. However, he opposed to grant anticipatory bail to the petitioner.

5. I have heard and considered the submissions made by the learned counsel appearing for petitioner as well as Additional Public Prosecutor and perused the records.

6. On perusal of the statement of the victim girl, wherein she has only stated that the parents of minor girl compelled her to get marry to another boy and hence, she left her home and she had worked in a jewellery shop at Tiruppur, wherein the police had rescued her. Since the victim girl is not willing to go to the parental house, she was sent to a home. Now, taking into consideration the fact that there is no allegation of sexual harassment, that apart, now the victim girl was also rescued and the petitioner is also willing to marry the victim girl after she attains majority in the month of February 2021, and also considering the undertaking affidavit filed by the petitioner as well as parents of the petitioner, this Court is inclined to grant anticipatory bail to the petitioner, subject to the following conditions:

a) Accordingly, the petitioner is ordered to be released on bail, in the event of arrest or on his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate No.2, Perambalur on condition that the petitioner shall execute a separate bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, and on further condition that:

[b] 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;

[c] the petitioner shall appear before the respondent

police as and when required for interrogation;

[d] the petitioner shall not tamper with evidence or 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 petitioners 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];

[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

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

-sd/-
22/01/2021

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 JUDICIAL MAGISTRATE NO.2,
PERAMBALUR.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
KUNNAM POLICE STATION, KUNNAM,
PERAMBALUR DISTRICT.

+1 CC to M/S.K.SELVARENGAN Advocate on payment of necessary charges SR NO. 731

CRL OP.18493/2020

Date :22/01/2021