

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.01.2021

CORAM

THE HONOURABLE MR. JUSTICE A. D. JAGADISH CHANDIRA

CrI.O.P.No.20271 of 2020

T.Sakthivel

... Petitioner

Vs.

The Inspector of Police,
All Women Police Station,
Gobi, Erode District.
(Cr.No.12 of 2020)

... Respondent

Prayer: Criminal Original Petition filed under Section 438 of Cr.P.C., to enlarge the petitioner on bail in the event of his arrest in Connection with the Crime No.12 of 2020 pending on the file of the respondent police.

For Petitioner : Mr.P.Vishnu

For Respondent : Mr.C.Iyyappa Raj

Additional Public Prosecutor

For Intervenor : Mr.P.Saravanan

ORDER

(This case has been heard through video conference)

The petitioner who apprehends arrest at the hands of the respondent police for the alleged offences punishable under Sections 11(1) & 12 of Protection of Child From Sexual Offences Act, (POCSO), in Crime No.12 of 2020, on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution as per the defacto complainant viz., Prakasan is that he is working as a driver in the Transport Corporation and he is having two children, one girl child aged about 10 years and one boy child aged about 7 years. The defacto complainant left his children in his mother-in-law's house. On 08.10.2020, the defacto complainant had gone to see the children, at that time, his daughter had informed that the accused had made lewd gestures, by lifting his dhoti and exhibiting his stomach by shaking and made gesture as if kissing the child. Hence, the complaint.

3. The learned counsel for the petitioner would submit that the petitioner is an innocent person and he has been falsely implicated in this case due to previous enmity on account of business rivalry. He would further submit that this is the second application for anticipatory bail and the earlier application in CrI.O.P.No.17517 was dismissed on 09.11.2020. He would submit that the petitioner is having a Grocery Shop near the shop of the grandmother's shop of the victim and there was a previous enmity. Apart from that one Siruthaivalluvan, a close relative of the victim misbehaved with the wife of the petitioner namely Gauthami, and on the complainant given by the said Gauthami, a case in Crime No.36 of 2019 was registered against the said Siruthaivalluvan for offence under Sections 354 of 506(2) IPC and that the respondent has completed the investigation and filed final report. Thereby, as a counter blast out of enmity and motive to take revenge, the defacto complainant has instigated his daughter to give a false complaint. He would submit that no such incident had happened. Even as per the complaint, the place where the petitioner is stated to have lifted his clothes and exhibited his stomach is a open terrace and if the petitioner had done such an act, it would have been visible to everybody in the neighbourhood. Whereas, none of the neighbours who have been examined by the police have spoken against the petitioner. As stated above, a false complaint has been given against the petitioner to wreak vengeance. He would submit that the respondent has also conducted an enquiry with regard to place of occurrence and found that the averments to be false. Hence, he prays for grant of Anticipatory Bail to the petitioner.

4. The learned Additional Public Prosecutor would vehemently oppose stating that the petitioner is aged about 47 years and the allegation against him is that he had abused the victim girl by lifting his dhoti and had made sexually suggestive gestures against the victim girl. He would submit that the investigation is pending. However, he would submit that on the complaint given by the wife of the petitioner, a case in Crime No.36 of 2019 has been registered by the Goundambadi Police Station for offence under Sections 354 and 506 (2) IPC against one Siruthaivalluvan who is a close relative of the victim girl.

5. The learned counsel for the Intervenor would submit that the petitioner is the neighbour of the defacto complainant and had abused the minor daughter of the defacto complainant by making suggestive gestures by lifting his dhoti and also made gestures as if kissing the child. He would further submit that the defacto complainant is threatened and being pressurized by the Vanigar Sangam to withdraw the complaint.

6. Heard both sides and perused the statement which has been recorded from the victim under Section 164 Cr.P.C.

7. Taking into consideration the facts and circumstances of the case and the submission made by the learned Counsels, this Court is inclined to grant Anticipatory Bail to the petitioner subject to the following conditions;

8. 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 on which the order copy is made ready, before the Mahila Court, Erode, on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, each 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, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[a] the petitioner and 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.

[b] the petitioner shall report before the respondent police daily at 10.30 a.m. until further orders.

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond either during investigation or trial.

[e] 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].

[f] If the accused thereafter abscond/s, a fresh FIR can be registered under Section 229A IPC.

सत्यमेव जयते
-sd/-
20/01/2021

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 MAHILA COURT,
ERODE.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
GOBI, ERODE DISTRICT.

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

CRL OP.20271/2020

Date :20/01/2021

MK:15/02/2021



WEB COPY