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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2021

CORAM

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CrI.O.P.No.21611 of 2021

D.Jayapal

... Petitioner

Vs.

State by
The Inspector of Police
W9, All Women Police Station
Villivakkam Police Station
Chennai.
(Crime No.2 of 2021

...Respondent

PRAYER: Criminal Original Petition has been filed under Section 439 of Cr.P.C praying to enlarge the petitioner on bail in Spl.S.C.No.110 of 2021.

For Petitioner : Mr.M.Mohamed Muzammil

For Respondent : Mr.N.S.Suganthan
Government Advocate

ORDER

(The case has been heard through video conference)

The petitioner who was arrested and remanded to judicial custody on 05.05.2021 for the offences under Sections 10 read with 9 (k) (l) (m) (n) of POCSO Act, in Crime No.2 of 2021, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the defacto complainant is the wife of the petitioner. The petitioner has sexually harassed her own daughter who is a special child. Hence, the complaint.

3. The learned counsel for the petitioner would submit that the petitioner who is the father of the victim girl is a retired Railway employee and he was the one who was maintaining the family and now based upon the false complaint lodged by his wife, he has been falsely implicated in this case and that he has been suffering incarceration for more than 195 days from 05.05.2021.

4. The learned Government Advocate raised strong objection stating that as a father, the petitioner should have taken care of



the mentally retarded child whereas, he has sexually harassed the child and hence, the mother of the victim has lodged the complaint and he would submit that the statement of the victim has been recorded under Section 164 Cr.P.C. and that charge sheet has been filed and the same has been taken on file in Spl.S.C.No.110 of 2021 on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai, and the case is now posted on 26.11.2021.

5. At this juncture, the learned Counsel for the petitioner would submit that the petitioner is ready to stay away from the victim and her mother and he would not cause any interference to them and that the petitioner also undertakes to take care of the victim and her mother by giving them 50% of of his pension amount as maintenance if the Court directs.

6. It is seen that the statement of the victim has been recorded under Section 164 Cr.P.C. and the investigation has been completed and charge sheet has been filed and the same has also been taken on file. Further, the petitioner undertakes to stay away from the victim and her mother and assures to pay 50% of his pension amount to them as monthly maintenance. Considering the above facts and also considering the period of incarceration undergone by the petitioner, this Court is inclined to grant bail to the petitioner with certain conditions.

6. Accordingly, the petitioner is ordered to be released on bail on his executing 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 learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai, and on further conditions that:

(a) 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 appear before the trial Court on all hearings without fail and to co-operate for the trial.

(c) The petitioner is directed to stay away from the victim and her mother and also directed to pay 50% of his pension amount as monthly maintenance to them without fail until further orders.

(d) the petitioner shall not tamper with evidence or witness during trial;

(e) the petitioner shall not abscond during trial;

(f) 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.R. Shaji Vs. State of Kerala* [(2005) AIR SCW 5560]; and;



(g) if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

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-sd/-
18/11/2021

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 SESSIONS JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES
UNDER POCSO ACT, CHENNAI.

2 THE INSPECTOR OF POLICE,
W9, ALL WOMEN POLICE STATION,
VILLIVAKKAM POLICE STATION,
CHENNAI.

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1CC to M/S M. MOHAMED MUZAMMIL Advocate on payment of
necessary charges SR.NO.12950

CRL OP.21611/2021

Date :18/11/2021

CSK 18/11/2021