



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserving on	Pronounced on
25.01.2021	29.01.2021

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P(MD) No.214 of 2021

Jeyson

... Petitioner/Sole Accused

Vs.

The State rep. By
The Inspector of Police,
All Women Police Station,
Marthandam,
Kanyakumari District
Crime No.48 of 2020

... Respondent/Complainant

For Petitioner : Mr.G.Aravinthan
For Respondent : Mr.A.P.G.Ohm Chairma Prabhu
Govt.Advocate (crl.side)

Prayer:

This Criminal Original Petition filed under Section 438 Cr.P.C. praying to enlarge the petitioner on bail in the event of his arrest in Crime No.48 of 2020, on the file of the respondent.

ORDER : The Court made the following order :-

The Petitioner / Accused in Crime No.48 of 2020, apprehends arrest at the hands of the respondent Police for the offences punishable under Section 7 r/w 8 of Protection of Children from Sexual Offences Act, 2012, seek anticipatory bail.

2. The gist of the case is that

(i). The defacto complainant is the mother of the victim child. The defacto complainant had married one Balamurugan some years prior and they have daughter, who is aged about 8 years. For the past two years, she is working in Lalitha Jewellery at Nagercoil. Her husband Balamurugan, who is an electrician by profession, is a drunkard, not attending to the work, making any earnings and he was forcibly taking money from the defacto complainant and having drinks, whenever the defacto complainant resisted, she would be assaulted. Further, unable to bear any further, on 02.12.2020, she along with her child had left the matrimonial home and was living separately in a rented portion in Nagercoil.



(ii) The defacto complainant's husband had lodged a complaint for 'Woman and Girl Missing', before the Thuckalay Police Station, in Crime No.980 of 2020, on 03.12.2020. Thereafter, on coming to know about the same, she and her daughter appeared before the Thuckalay Police Station, thereafter, before the learned Judicial Magistrate No.1, Padmanabhapuram, gave statement informing that both of them are not willing to join Bala Murugan want to live separately, thereafter, the said case was closed on 23.12.2020.

(iii) After appearing before the Thuckalay Police Station and the learned Judicial Magistrate, at about 11.00 p.m., at 4.00 p.m., she lodged a complaint to the respondent Police stating that on 26.02.2020, she had gone to attend her work, at that time, her daughter was alone at home. At about 6.00 p.m., her husband in a drunken state and the petitioner had come to her home. Her husband was unconscious and laid down. Taking advantage of the situation, the petitioner misbehaved with his daughter and molested her. Fearing for life, she had ran into the bedroom and latched herself. Thereafter, her husband got conscious broken open the window. At that time, their minor daughter stated about the happenings. The defacto complainant and her husband thought about the same, since it would affect the future of the child and adversity to the family, decided not to lodge any complaint and that is the reason for delay in lodging the complaint.

3. The contention of the petitioner is that the petitioner is the friend of Balamurugan, who is the husband of the defacto complainant, they used to often have liquor together, which was not approved by the defacto complainant. Due to which, she developed animosity against the petitioner. The petitioner has been falsely implicated, though the occurrence is said to have taken place on 26.02.2020 only on 18.12.2020 at 11.00 p.m., the complaint has been lodged as a counter blast to the complaint in Crime No.980 of 2020. The defacto complainant, who was working in the Lalitha Jewellery had some inappropriate relationship and thereafter, she left the matrimonial home on 02.12.2020 and living with one person along with her daughter. The petitioner had taken steps to stop such activities and advised the defacto complainant to refrain from her activities, turn around and to live with her husband Balamurugan, as a family, considering the future of the child. Further, when the defacto complainant went missing from 02.12.2020 to 18.12.2020, the petitioner and his friend Balamurugan had taken steps to find out her whereabouts. For this reason, the minor daughter, who is under the care of the defacto complainant, had been tutored and a false complaint has been lodged against the petitioner.

4. The learned Government Advocate (crl.side) submitted that in this case, the defacto complainant had lodged a complaint on 18.12.2020 at about 11.00 p.m. Prior to it, the defacto complainant had left the matrimonial home on 02.12.2020 and she was living with her child in Nagercoil. The defacto complainant and Balamurugan



along with child were earlier living in Thuckalay. The defacto complainant's husband was a drunkard and was not taking care of the family. In fact, she was living on the salary of the defacto complainant. Whenever the defacto complainant refused to give money, her husband could call the defacto complainant's colleagues and used abusive words. Further, he was spreading tantrums against the defacto complainant that the defacto complainant was leading a immoral life. The defacto complainant in her statement before the Magistrate in Crime No.980 of 2020 had stated about the attempt of the petitioner in misbehaving with her daughter. Further, the husband of the defacto complainant compelled the defacto complainant to share the her bed with his friends. The minor daughter had also given a statement stating about the petitioner attempt to molest. The offence being serious in nature, opposed the anticipatory bail application.

5. Considering the submissions and on perusal of the materials it is seen that the defacto complainant and Balamurugan had married, they have a minor child, aged about 8 years, they were living in Thuckalay, near the parents house of Balamurugan. The grievance of the defacto complainant is that her husband Balamurugan was addicted to Alcohol and a drunkard, who used to have drinks with his friends, the petitioner is one of them. Further, her husband used to spread tantrums against her malign her character and also call upon her colleagues and used abusive words. She had left the matrimonial house on 02.12.2020 and after the police secured her in Crime No.980 of 2020 on 18.12.2020, this complaint has been lodged against the petitioner. The alleged occurrence said to have taken place on 26.02.2020 and 10 months thereafter, the complaint has been lodged. Further, the defacto complainant was not having cordial relationship with her husband. Further, she had an animosity against the friends of the husband, who are the cause of her husband drunkenness, the petitioner, who is the friend of her husband, is the cause for all the happenings in her family and her present state of life.

6. Taking into consideration the above facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

7. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Special POC SO Judge, Nagercoil, Kanyakumari, 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 to the Police Officer, who intends to arrest or to the satisfaction of the learned Magistrate concerned 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., for a period of three weeks, and thereafter, as and when required for interrogation.

(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 la, 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]**; and;

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

sd/-

29/01/2021

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1. THE SPECIAL POCSO JUDGE,
NAGERCOIL, KANYAKUMARI DISTRICT.
2. THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
MARTHANDAM, KANYAKUMARI DISTRICT.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to Mr.G.ARAVINTHAN, Advocate (SR-565[I] dated 01/02/2021)

ORDER IN

CRL OP(MD) No.214 of 2021

Date :29/01/2021