



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Date : 18/01/2021

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD). No.430 of 2021

Sanmugaiya

... Petitioner/Sole Accused

Vs

State Rep.by
The Inspector of Police,
Karivalamvanthanallur Police Station,
Tenkasi District.
Crime No.399 of 2020.

... Respondent/Complainant

For Petitioner : Mr.R.J.Karthick,
Advocate.

For Respondent : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.Side)

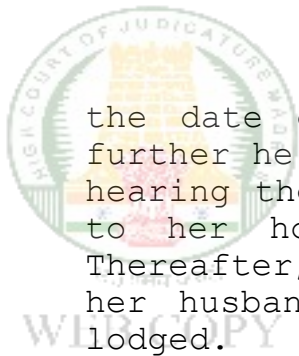
PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :- For Bail in Crime No.399 of 2020 on the file of the
Respondent Police.

ORDER : The Court made the following order :-

The petitioner/sole accused, who was arrested and remanded to judicial custody on 24.11.2020 for the offences punishable under Sections 448, 354(A), 376 r/w 511 and 506(i) IPC in Crime No.399 of 2020 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that the defacto complainant, who is aged about 30 years, married to one Marichamy and they got two minor children. The defacto complainant's husband was doing milk vending business and hence, he used to leave the house in early morning around 05.00 a.m. On 13.11.2020, as usual, the husband of the defacto complainant left for work by leaving the door open. The petitioner herein, who is the cousin brother of the defacto complainant's husband, residing nearby house of the defacto complainant. Taking advantage of the situation, he entered into the house and had molested and attempted to rape. The defacto complainant resisted the same, raised alarm and the minor daughter, who is aged about 5 years, woke up and she also cried. Thereafter, the petitioner disclosed that he had an intention towards her from



the date of her marriage and he waited for the opportunity and further he threatened her not to disclose the incident to any one. On hearing the alarm, the neighbors, namely Santhanam and Meena rushed to her house and they saw the petitioner leaving the house. Thereafter, the defacto complainant informed about the incident to her husband and after one week the present complaint came to be lodged.

3.The learned counsel for the petitioner would submit that the petitioner and the husband of the defacto complainant are cousins brothers and they are residing in nearby houses in the same village. They are also adjacent land owners and doing agricultural works. He would further submit that they have some civil dispute with regard to the land and its usage. The petitioner is a married man and got one child. He would also submit that the petitioner never involved in any activities as alleged by the prosecution and due to civil dispute, a false complaint has been lodged and there is one week delay in lodging the complaint and there is no explanation for the same. He would further submit that the eye witness, namely Meena, who was examined under Section 164 Cr.P.C., from her statement it is seen that no such incident taken place. The petitioner has no obsession on the defacto complainant and he is in judicial custody from 24.11.2020 and hence, he seeks bail to the petitioner.

4.The learned Government Advocate(Crl.Side) appearing for the respondent police would submit that the petitioner is the sole accused in this case. The defacto complainant's husband is doing milk vending business and hence, he has to leave the house at about 05.00 a.m., on every morning. The petitioner herein taking advantage of the same, entered into the house of the defacto complainant, attempted to rape her. On hearing the defacto complainant's alarm, the neighbors rushed to the house of the defacto complainant and therefore, the petitioner ran away from the scene of occurrence. He would further submit that the petitioner and the defacto complainant are relatives and hence, the complaint was lodged after one week and the petitioner was arrested on 24.11.2020. He would also submit that the offence committed by the petitioner is serious one and hence, he opposed to grant bail to the petitioner.

5.It is seen that the petitioner is a sole accused. The allegation against the petitioner is that he entered into the house of the defacto complainant and attempted to rape her. The reasoning for the petitioner in committing such offence is creating some doubts. Further in 164 Cr.P.C., statement, it is stated that the child woke up at that time the petitioner attempted to rape the defacto complainant, which is not a normal conduct. It is also seen that there is civil dispute between the parties.

6.Taking note of the above facts and circumstances of the case and in view of the consideration the period of incarceration, this



Court is inclined to grant bail to the petitioner subject to the following conditions:

7. Accordingly, the petitioner is ordered to be released on bail on their 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 Judicial Magistrate Court, Sankarankoil.

i) the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate/concerned court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity

ii) the petitioner shall stay at Tirunelveli and report before the Tirunelveli Town Police Station daily at 10.30 a.m for a period of four weeks and thereafter, as and when required for interrogation.

iii) the petitioner shall not tamper with evidence or witness.

iv) the petitioner shall not abscond during trial.

v) 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].

vi) If the accused/petitioner thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

sd/-
18/01/2021

/ TRUE COPY /

/ /2021
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 JUDICIAL MAGISTRATE, SANKARANKOVIL.
2. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.
3. THE OFFICER INCHARGE, SUB JAIL, TENKASI.
4. THE INSPECTOR OF POLICE,
KARIVALAMVANTHANALLUR POLICE STATION,
TENKASI DISTRICT.
5. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

COPY TO:

THE INSPECTOR OF POLICE,
TIRUNELVELI TOWN POLICE STATION,
TIRUNELVELI.

+1 CC to Mr.R.J.KARTHICK, Advocate (SR-284[I] dated 19/01/2021)

ORDER
IN
CRL OP(MD) No.430 of 2021
Date :18/01/2021

GNS
MS/PN/SAR-2/19.01.2021/4P.8C