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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 02/03/2021

PRESENT

The Hon'ble Mr. Justice M.NIRMAL KUMAR

CRL OP(MD). No.598 of 2021

S.Malarselvi

... Petitioner/Accused
Rank not known

Vs

The State Rep. by
The Inspector of Police,
AWPS Police Station,
Lalkudi, Trichy District.
(Crime No.21/2020).

... Respondent/Complainant

For Petitioner : Mr.Veera Kathiravan, Senior Counsel for
M/s.Veera Associates

For Respondent : Mr.R.Srinivasan,
Government Advocate (Crl.Side)

PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

PRAYER :-

For Anticipatory Bail in Crime No.21/2020 on the file of the respondent police.

ORDER : The Court made the following order :-

Heard the learned counsel appearing for the petitioner and the learned Government Advocate(Crl. Side) appearing for the respondent.

2. The petitioner apprehending arrest at the hands of the respondent police for the offences punishable under sections 312 and 506(i) of I.P.C. and Sections 5(i), 5(j)(ii) and 6 of POCSO Act, in Crime No.21 of 2020 on the file of the respondent police, seeks anticipatory bail.

3. The case of the prosecution is that the victim girl is studying ninth standard. She was sexually assaulted by unknown person and she was threatened by him that if she reveals, her family



members will be killed. Hence, she did not inform about the incident to any one. Thereafter on two three occasions, the said person had committed penetrative sexual assault on her. Later the victim girl fell ill, she was taken to Saraswathi Hospital, Pullambadi and there, she was found that she is seven month pregnant. Thereafter, the petitioner aborted the fetus. Hence, the present complaint. Prior to it, the Child Welfare Committee conducted an enquiry and confirmed the happenings and the petitioner as Doctor attended the victim girl, taken out the 7 month Still Born Baby.

4. The learned counsel for the petitioner submitted that the petitioner is a Doctor by profession. The victim girl and her mother came to the hospital on 03.08.2020 at about 02.00 pm. They stated that the victim girl is ill and she is in a unstable condition and they also stated that the victim girl is major. Thereafter the petitioner examined her, found her to be pregnant at foetus being 29-30 weeks. Advised her to take herself, go to Government General Hospital, Trichy. On 04.08.2020 at about 08.00 pm, the victim girl again came with her parents with profuse bleeding. Since it was an emergency, to save the girl and baby, the petitioner attended to her at about 09.45 pm and a Still Born Baby was delivered. Since the victim girl health was in bad stage, she was admitted and given treatment as inpatient and discharged on 06.08.2020. The petitioner attended to the victim as Doctor to save her life.

5. The learned Government Advocate (Crl. Side) submitted that it is heinous crime. The custodial interrogation of the petitioner is very much warranted for investigation. He further submitted that when the petitioner attended the victim initially on 03.08.2020, had taken scan and found the victim girl is of 15 years minor. Further the victim and her parents were unable to give identity of the person, who is the cause for pregnancy. The petitioner as a Doctor, as per Medical Code and as per the Law bound to inform Child Welfare Committee and the Law Enforcing Authorities. On the contrary, till she was called for enquiry on 16.11.2020, she had not informed to any authority. However, the reason and the person involved ought to be found. Further in this case, A1 Samson is 62 years. Taking advantage of his dominant positions had committed the offence. During investigation, the role of the petitioner was found and an alteration report on 25.02.2021 was filed arraying the petitioner as A2.

6. The petitioner's counsel on instructions submits that the petitioner will take a demand draft for a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) favouring the victim and enclose the same along with the surrender petition. The Court below shall take steps to hand over the same to the victim through the respondent police. Of course, this is without prejudice to the defence of the petitioner's in the trial.



7.The petitioner a Doctor by profession, who attached to Saraswathi Hospital, Pullambadi had initially attended the victim girl on 03.08.2020, at that time Scan was taken, the victim girl was found to be a minor aged about 15 years. Further the person who is cause for the pregnancy was not disclosed to the petitioner. Though the petitioner advised the victim and her parents to visit Government General Hospital, Trichy for treatment, as per the Medical Code and as per the Law ought to have informed the Law Enforcing Authorities. Thereafter attended and treated the victim, on emergency situation, as inpatient from 04.08.2020 to 06.08.2020 and till 16.11.2020 not disclosing these facts creates some doubt.

8.Be that as it may, the petitioner, who is a Doctor had treated the victim during emergency situation, further voluntarily came forward to help the victim, I am inclined to grant anticipatory bail to the petitioner with certain conditions.

9.Accordingly, the petitioner is ordered to be released on bail in the event of arrest or her appearance, within a period of two weeks from the date of receipt of a copy of this order, before the Mahila Court, Trichy, 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 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 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]**; and;



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

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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 JUDGE, MAHILA COURT, TRICHY.
2. THE INSPECTOR OF POLICE,
AWPS POLICE STATION,
LALKUDI, TRICHY DISTRICT.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. CC to M/S.VEERA ASSOCIATES Advocate SR.No. 1688

ORDER
IN
CRL OP(MD) No.598 of 2021
Date :02/03/2021

IAS
TE/SMA/SAR-IV : 09/03/2021 : 4P/5C