



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

Date : 20/01/2021

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD). No.632 of 2021

Santhosh @ Santhoshkumar

... Petitioner/Accused

Vs

State Rep. by
The Inspector of Police,
Bodi Taluk, Theni District.
Crime No.2333/2020.

... Respondent/Complainant

For Petitioner : Mr.Muthu Vijaya Pandian.P,
Advocate.

For Respondent : Mr.A.P.G.Ohm Chairma Prabhu,
Government Advocate (Crl.Side)

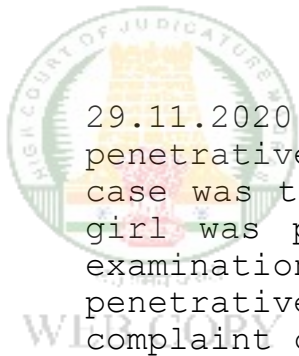
PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :- For Bail in Crime No. 2333/2020 on the file of the
respondent Police

ORDER : The Court made the following order :-

The petitioner, sole accused herein was arrested and remanded to judicial custody on 05.12.2020 for the alleged offences under Section 12 of Protection of Child from Sexual Offences Act, 2012 @ under Section 366 of IPC and Section 4 of the protection of Children from Sexual Offences Act, 2012, in Crime No.2333 of 2020, on the file of the respondent Police, seeks bail.

2.The case of the prosecution is that the defacto complainant viz., Amsavalli, Melasokkanathapuram, Thirumalapuram, Podi, lodged a complaint stating that her daughter viz., Vasanthapriya, who is aged about 14 years, was found missing on 29.11.2020. Despite search made in all places, she was unable to trace her. Hence, she lodged a complaint before the Bodi Taluk Police Station, which was taken as C.S.R.No.610 of 2020. On 02.12.2020, the victim girl was traced. When she was enquired by the police, she was making contradictory statement and her reply was not proper. Thereafter, the minor victim girl was produced before the Child Welfare Committee and later, she was put at Koduvilarpatti Mythri Society Ladies Home. The defacto complainant met her daughter at the home then, she come to know that the petitioner, had spoken sweet words with the victim
<https://services.e-governance.gov.in/services> her to Melur and stayed there for three days (from

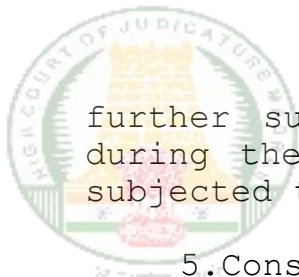


29.11.2020 to 02.12.2020), at that time, he had committed penetrative sexual assault on the victim girl. Subsequently, the case was transferred to the All Women Police Station and the victim girl was produced for medical examination and during the medical examination, it was found that the victim girl, possibilities of penetrative sexual assault was there. Thereafter, the above said complaint came to be registered.

3.The contention of the learned counsel appearing for the petitioner is that the petitioner and the victim girl are close relatives and both loved each other, which came to knowledge of her parents, they objected for the same. Due to which, the victim girl stopped talking to the petitioner. Thereafter, the petitioner shifted from Bommarajapuram Village and stayed at Melur. To petitioner shock and surprise, on 29.11.2020, the victim minor girl on her own came to the petitioner's house at Melur and informed that the victim girl's parents were making arrangements for her marriage with a elderly persons against her wish, therefore, she came out and the victim girl informed that if the petitioner forced her back to stay with her parents, she will commit suicide. The petitioner found the victim girl in an emotional break down and in a suicidal attitude, the petitioner consoled the victim by taking her to a change of place, considering the mental stress of the victim. Thereafter, the petitioner came to know that the parents of the victim girl lodged a complaint, the petitioner himself brought the victim girl and produced her before the Police Station. The victim girl on reaching the police station, refused to go with her parents, later, she joined her parents. He further submitted that the petitioner is an innocent person and he has been falsely implicated in this case. Hence, he seek bail.

4.The learned Government Advocate (Crl. Side) appearing on behalf of the respondent Police submitted that in this case the victim girl, who is aged about 14 years, was found missing from 29.11.2020. The petitioner, who is the relative of the victim girl, had taken the victim girl to Melur and stayed there for three days, at that time the petitioner had committed penetrative sexual assault on her. Thereafter, on 02.12.2020, the victim girl was secured. The victim girl refused to go with her parents and she was unable to realize what happened to her. Hence, the respondent Police produced the victim girl before the Child Welfare Committee and after counselling, she was kept in a home, later, she joined her parents. Thereafter, the victim girl was produced before the Judicial Magistrate and 164 statement was recorded on 10.12.2020. In 164 statement, she admits that the petitioner had come to the house of the victim girl and promised that he will marry her and keep her in happiness. The victim girl due to her teen age and not knowing the reality, succumbed to the sugar coated words, joined the petitioner, who took her in his bike to Melur and both stayed at Melur for three days. Thereafter, the petitioner in order to escape from the

<https://hcservices.hcs.gov.in/hcservices/> the victim girl was produced by the petitioner. He



further submitted that the medical examination was conducted and during the medical examination, it was found that the victim was subjected to penetrative sexual assault.

5.Considering the facts and circumstances of the case and also considering the rival submissions on either side and on perusal of the materials available on records including 164 statement, it is seen that the petitioner and the victim girl are close relatives and they were in love with each other. In 164 statement of the victim girl, she has stated that the petitioner only hugged and kissed her and nothing more. From alteration report, it is seen that the Doctor opined that victim might have been subjected to sexual assault.

6.In view of the above facts and circumstances of the case and taking into 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 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 Judicial Magistrate, Bodinayakkanur.

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 report before the respondent police daily at 10.30 a.m for a period of two 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].

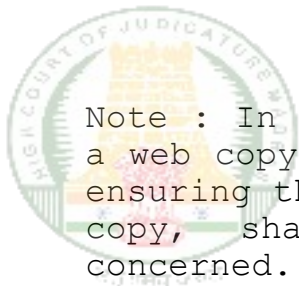
vi) If the petitioner/accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-
20/01/2021

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/ /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.

WEB COPY

TO

1 THE JUDICIAL MAGISTRATE,
BODINAYAKKANUR.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THENI DISTRICT.

3 THE INSPECTOR OF POLICE,
BODI TALUK, THENI DISTRICT.

4 THE OFFICER INCHARGE,
DISTRICT JAIL, DINDIGUL.

5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.P.MUTHU VIJAYA PANDIAN, Advocate (SR-383[I] dated
21/01/2021)

ORDER
IN
CRL OP(MD) No.632 of 2021
Date :20/01/2021

vsg
JM/VR/SAR II/22.01.2021/4P/7C