



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 19/02/2021

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP (MD) . No.2653 of 2021

Krishnan ... Petitioner/Accused No.2

Vs

The State Rep by
The Inspector of Police,
All Women Police Station, Marthandam,
Kanyakumari District.
Cr.No. 4 of 2021..

... Respondent/Complainant

For Petitioner : M/s.Ramakrishna Dass N.S.,
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 :-

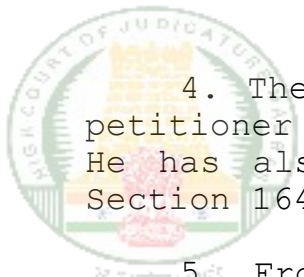
For Bail in Crime No.4 of 2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/A2, who was arrested and remanded to judicial custody on 14.01.2021 for the offences punishable under Sections 366(A) of IPC r/w. Sections 5(1), 5(m), 5(n), 6, 7, 8 of POCSO Act on the file of the respondent police seeks bail.

2.The case of the prosecution is that on 13.01.2020 the petitioner had picked up the victim girl and gave her sex torture. Hence the complaint.

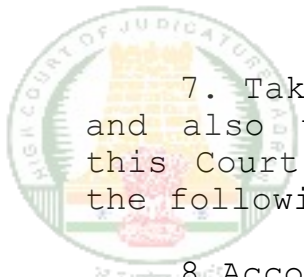
3.The learned counsel for the petitioner would submit that the petitioner is innocent and a false case has been foisted against the petitioner. He would further submit that the victim on her own left the parental home and stayed with the petitioner. He would submit that the petitioner is in jail for more than 30 days, hence he may be granted bail.



4. The learned Government Advocate(Crl.Side) would submit that petitioner had picked up the victim girl and gave her sex torture. He has also produced the statement of the victim recorded under Section 164(5) of Cr.P.C.

5. From the perusal of the 164 (5) Cr.P.C statement of the victim, it is seen that the victim was staying with her parents along with her younger brother. Both her parents are working in rubber plantation and used to go to work in the early morning and return back. The paternal uncle passed away and her aunt was living separately with her two sons namely Jennis and Jerwin. Jennis was working as AC Mechanic and Jerwin was studying III B.E. Civil Engineering. Paternal aunt was employed as house maid in Abudhabi and her two sons were living separately. The father of the victim taking pity of the two sons living separately has asked them to come to their house, during that time the elder son used to speak with her and informed his younger brother was in love with her. After the victim attained puberty the said Jerwin was giving constant torture to the victim and the incidents happened during the year 2018-2019. One day Jerwin had forcible sexual relationship with her and he also threatened her not to disclose the same to her parents or to any body. On another day the brother of the victim had witnessed the same and he was also threatened .The victim conveyed the same to the parents which was not seriously considered. The victim girl finding no safety was living under constant threat. In the meanwhile the victim developed love with the petitioner herein and they were continuously talking with each other, which came to the knowledge of the parents of the victim and they warned the victim not to continue the relationship with the petitioner. On the other hand the harassment of the Jerwin continued. Further the friends of the said Jerwin informed the victim to speak with Jerwin by attending his calls. Unable to bear the harassment in Dec. 2019 the victim girl left the house and gone with the petitioner and stayed with him. Thereafter the victim girl's father called the petitioner herein and he left the victim in her parental home. The victim behavior was found abnormal she was taken for counselling and during counselling the victim had not stated anything. Thereafter on further counselling the victim mother found that she had been physically assaulted. On further questioning the victim girl disclosed the entire fact and harassment given by Jerwin. When the same was informed to the mother of Jerwin without showing any remorse, she stated that Jerwin being a male and a relative of the victim has got every right in indulging in such activities, hence there was a quarrel between both the families. The victim girl on seeing all these things unable to bear further left the house and joined with the petitioner.

6. From the reading of the 164(5) Cr.P.C statement of the victim it is clear that the petitioner is not at fault and the victim only compelled the petitioner to take her away. Further it is also seen that the harassment continued from the year 2018 to till date, hence the victim had joined the petitioner and she had only forced the petitioner to continue their relationship.



7. Taking note of the above facts and circumstances of the case and also taking into consideration the period of incarceration, this Court is inclined to grant bail to the petitioner subject to the following conditions:

8. 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 Special Court for exclusive trial of cases under the POCSO Act, Kanyakumari at Nagercoil.

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 accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-
19/02/2021

/ TRUE COPY /

/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

AAV

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 Court for exclusive trial of cases under POCSO Act,
Kanyakumari at Nagercoil.

2. The Superintendent, Central jail, Palayamkottai

3. The Inspector of Police,
All Women Police Station, Marthandam,
Kanyakumari District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.N.RAMAKRISHNADASS, ADVOCATE, SR NO.1248

ORDER

IN

CRL OP(MD) No.2653 of 2021

Date : 19/02/2021

KK/MS VR SAR 1(19.02.2021) 4P 6C