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

Date : 25/06/2021

PRESENT
The Hon`ble Mr.Justice G.ILANGOVAN

CRL OP(MD). No.7990 of 2021

Ajay ... Petitioner/Sole Accused

Vs

State rep.by,
The Inspector of Police,
Kadaiyanallur Police Station,
In Cr No.165/2021,
Tenkasi District. ... Respondent/Complainant

For Petitioner : Mr.C.Susi Kumar,
Advocate.
For Respondent : Mr.R.M.Anbu Nithi,
Additional Public Prosecutor

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

PRAYER :-
For Anticipatory Bail in Crime No.165 of 2021 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner, who apprehends arrest at the hands of the respondent police for alleged offences punishable Girl Missing @ 376 of IPC & Section 6 r/w 5(1) of Prohibition of Child Marriage Act, 2006, in Cr.No.165 of 2021, seeks anticipatory bail.

2. Heard both sides.

3.The case of the prosecution is that Victim girl is the elder daughter of the defacto complainant. She is aged about 17 years. On 19.04.2021, the defacto complainant and his wife went to their fruit stall and on the same day, at about 08.00 p.m, they found that their daughter was missing from the home. A complaint was lodged before the respondent police. Based on the complaint, a case was registered under Section 'Girl Missing'. In this circumstance, on 21.04.2021, the defacto complainant produced the girl before the respondent police and informed that the petitioner herein, kidnapped the his daughter and he had a sexual intercourse with her by giving a false promise that he will marry her. Hence, the complaint.

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4.The learned counsel appearing for the petitioner would submit that the petitioner is an innocent person and he has been falsely implicated in this case. He would further submit that the victim girl and the petitioner were fell in love and even in the course of statement, under Section 164 Cr.P.C, no allegation has been made by the victim against him. So, on that ground, he seeks anticipatory bail to the petitioner.

5. The learned Government Advocate (Crl.Side) would submit that the petitioner had a sexual intercourse with the victim girl by giving a false promise that he will marry her. Hence, he opposed to grant anticipatory bail to the petitioner.

6. Heard both sides.

7.It is seen that earlier anticipatory bail application was withdrew by the petitioner, on 21.05.2021. Subsequent to that, this petition has been filed. During the course of argument, the learned counsel for the petitioner would submit that the victim girl and the petitioner were fall in love and even in the course of statement, under Section 164 Cr.P.C, no allegation has been made by the victim against him. So, on that ground, he seeks anticipatory bail.

8. A case, that has been registered against the petitioner for the offences under Sections 376 of IPC & Section 6 r/w 5 (1) of Prohibition of Child Marriage Act. Reading of the statement, recorded during the course of investigation under Section 164 Cr.P.C before the concerned Magistrate shows that no allegation of rape or sexual assault has been made against the petitioner. During the medical examinations also, no external injuries were found. Moreover, it is seen that the victim girl is aged more than 17 years, on the date of alleged occurrence. But, reading of the statement given by the victim girl before the Medical Officer, it is seen that she was admitted that she had sexual intercourse with the petitioner. She would further say that the petitioner is a married man.

9. At the time of hearing, the above said statement of the victim girl that the petitioner already married man was clarified. The learned Additional Public Prosecutor, on instruction from the Investigation Officer, has informed the Court that the petitioner is not a married man.

10. Moreover, a *prima facie* case has been made out by the petitioner to show that it was a love affair.

11. Considering the above facts, this Court is inclined to grant anticipatory bail to the petitioner.

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12. 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 Judicial Magistrate, Tenkasi, on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each with two sureties, 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 once in a week i.e., every Monday at 10.30 a.m until further orders;

(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 petitioners 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/-
25/06/2021

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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.

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TO

1.THE JUDICIAL MAGISTRATE, TENKASI

2.DO-THROUGH : THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.

3.THE INSPECTOR OF POLICE,
KADAIYANALLUR POLICE STATION,
TENKASI DISTRICT.

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

ORDER
IN
CRL OP(MD) No.7990 of 2021
Date :25/06/2021

DSS
PK/JC/SAR-III/29.06.2021 : 4P/5C

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