



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

Date : 17/08/2021
PRESENT

WEB COPY

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD) . No.11222 of 2021

Anbarasu

... Petitioner/Sole Accused

Vs

The State rep.by
The Inspector of Police,
All Women Police Station,
Thiruverambur,
Tiruchirappalli District.
(Crime No. 14 of 2021).

... Respondent/Complainant

For Petitioner : Mr.A.THIRUVADIKUMAR,
Advocate.

For Respondent : Mr.T.SENTHILKUMAR,
Government Advocate (Crl.Side)

For Intervenor : Mr.R.NARAYANAN, Advocate

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

PRAYER :-

For Bail in Crime No.14 of 2021 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner/sole accused, who was arrested on 09.07.2021, for the offences punishable under Sections 9(n) and 10 of Protection of Children from Sexual Offences Act, 2012, in Crime No.14 of 2021 on the file of the respondent police, seeks bail.

2. This is an unfortunate case where a complaint has been lodged by the wife as against her husband that her husband misbehaved with their daughter.

3. The learned counsel appearing for the petitioner submits that for the occurrence said to have taken place on 27.10.2019, the complaint was lodged on 08.07.2021 and that too when the counsel for the petitioner made a request to the counsel for the defacto



complainant for incorporating certain conditions in a petition, which they intended to file for mutual consent divorce.

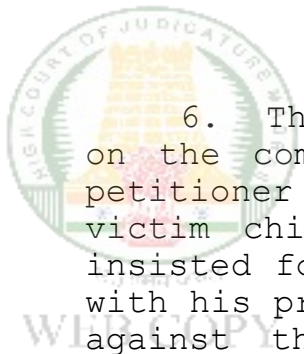
4. According to the learned counsel for the petitioner, at the instance of the defacto complainant, her counsel, one Banumathi has prepared a petition under Section 13(1)(B) of the Hindu Marriage Act, for mutual consent divorce and referred the same to the petitioner for his signature. The petitioner's counsel Mr.T.M.Vallatharasu, raised the following points as conditions to be incorporated in the petition.

"1. The 2nd petitioner is a graduate and she is employed in a private concern at Chennai. She is earning about Rs..... per month as salary and she is independent. The 2nd petitioner is able to maintain herself and her two children out of her own income. Hence, the 2nd petitioner has no claim of maintenance against the 1st petitioner either past or future against the 1st petitioner. There are no mutual claims between the spouses.

2. Apart from that, since the 1st petitioner is unemployed and could not maintain himself, he was not able to support for his two children's present and future expenses. Hence, as a permanent alimony for two daughters, on behalf of the 1st petitioner, his father Mr.D.Jayaraman had settled four of his properties in favour of petitioner's two daughters and the same has been duly registered as Settlement Deed No.1902/2018 on 02.05.2018 for their present and future maintenance."

This letter was addressed on 04.07.2021 and the complaint came to be filed on 08.07.2021.

5. The learned counsel for the petitioner pointed out that the petitioner and the defacto complainant are not in good terms. The divorce petition was filed in the year 2016 itself. Subsequently, the same was withdrawn at the instance of the elders. The learned counsel also drew the attention of this Court to the suit filed by the defacto complainant on behalf of the victim child and her another daughter as against the petitioner in O.S.No.962 of 20216 for maintenance and the application filed for attachment of his properties. He further submits that this petitioner is a Diploma Holder in Catering and Hotel Management and the defacto complainant is also a Diploma Holder. After the marriage, the petitioner encouraged her to pursue further study and thereafter, she studied B.Sc (IT) in Alagappa University (Distance Education Programme) and now, she is working in a Software Company at Chennai, whereas the petitioner has lost his job and he is not having any source of income. Therefore, the petitioner's counsel made a request to waive the maintenance and the same was proposed to be incorporated in the petition for mutual consent divorce.



6. The learned counsel for the petitioner further submits that on the compulsion of the defacto complainant, the father of the petitioner has also executed a settlement deed in favour of the victim child and her sister on 02.05.2018. Even thereafter, she insisted for some more property and coerced the petitioner to part with his property. Therefore, this bald allegation has been made as against the petitioner. Since the petitioner is in jail from 09.07.2021, he prays for grant of bail.

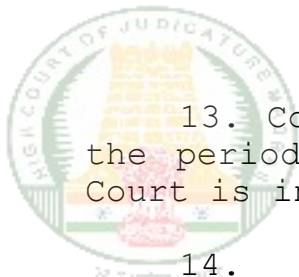
7. The learned Government Advocate (Crl. Side) on instructions, submits that the complaint was received only on 08.07.2021 and the Police have also taken steps to record the statement of the victim girl under Section 164 Cr.P.C and the same was recorded on 16.07.2021. He also submits that the victim child was also referred for medical examination. It is further submitted that the respondent Police has conducted the investigation, but, the occurrence was not known to any other witnesses, except the victim child and the defacto complainant.

8. Mr.R.Narayanan, learned counsel seeks permission of this Court to file a petition to intervene on behalf of the defacto complainant.

10. This bail petition has been filed by this petitioner on 09.07.2021 and the same was listed for hearing on 11.08.2021 and again, for the purpose of production of CD file, the same was adjourned today.

11. Today, the Investigating Officer is present before this Court and produced the CD file. It appears that the Investigating Officer has not conducted any investigation with regard to the conduct of the defacto complainant and not ascertained the reasons for the delay in reporting the incident.

12. On perusal of the documents placed on behalf of the petitioner, it appears that there was a misunderstanding between the parties even in the year 2016 and they are living separately. A divorce petition was filed in the year 2016 and subsequently, it was withdrawn. Thereafter, a settlement deed was executed by the father of the petitioner in favour of the victim child and her sister (the daughters' of the defacto complainant) on 02.05.2018. A suit was filed by the defacto complainant on behalf of the victim girl and her another daughter in the year 2016. A petition for mutual consent divorce under Section 13(1)(B) of the Hindu Marriage Act was also prepared by the defacto complainant's counsel in the month July 2021 and the same was forwarded to the petitioner. The petitioner's counsel has also made a request for incorporating certain conditions, namely, to waive the maintenance, etc., by letter dated 04.07.2021. Thereafter, this complaint has been lodged by the defacto complainant on 08.07.2021.



13. Considering the above facts and circumstances of the case, the period of incarceration and the manner of investigation, this Court is inclined to grant bail to the petitioner.

14. Accordingly, the Criminal Original Petition is ordered. The petitioner is directed 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 Sessions Judge, Mahila Court, Thiruchirapalli and on further conditions that:

[a] 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 daily at 10.30 a.m. until further orders.

[c] the petitioner shall not abscond either during investigation or trial.

[d] the petitioner shall not tamper with evidence or witness 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]**.

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-
17/08/2021

/ 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 SESSION JUDGE,
MAHILA COURT, TIRUCHIRAPALLI.

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

3. THE SUPERINTENDENT,
CENTRAL PRISON, TIRUCHIRAPPALLI.

4. THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, THIRUVERAMBUR,
TIRUCHIRAPPALLI DISTRICT.

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

+1 cc to Mr.A.Thiruvadi Kumar, Advocate, SR.No.5441

ORDER

IN

CRL OP(MD) No.11222 of 2021

Date : 17/08/2021

SA/PN/SAR.1/17.08.2021/5P/7C