



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 24/08/2021

WEB COPY

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD). No.12109 of 2021

1.Sahubar Sathik

2.Anish Rani

... Petitioners/Accused Nos.8 & 9

Vs

The State rep.by
The Inspector of Police,
Tallakulam Police Station (L&O)
Madurai City
(Crime No. 760 of 2021).

... Respondent/Complainant

For Petitioners : Mr.D.S.HAROON RASHEED,
Advocate.

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

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

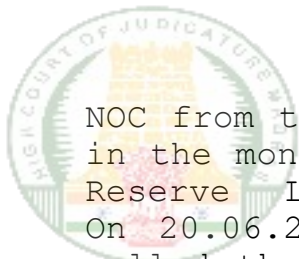
PRAYER :-

For Bail in Crime No. 760 of 2021 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioners/A8 and A9, who were arrested on 01.07.2021, for the offence punishable under Sections 370(4), 370(5), 371, 468, 471, 120(b) I.P.C & Sections 80 and 81 of JJ Act in Crime No.760 of 2021 on the file of the respondent police, seek bail.

2. The case of the prosecution is that the defacto complainant is residing at Sekkipatti Village of Melur Taluk and is a social worker. One Iswarya, W/o.Sonaiyan, who belongs to the same village of the defacto complainant, had two male and one female children. Due to poverty, she is unable to maintain her children. Hence, she decided to hand over her children to a children orphanage. The defacto complainant did all the help to the said Iswarya by getting

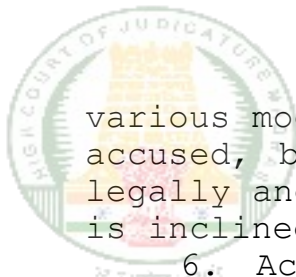


NOC from the local jurisdictional police and entrusted the children in the month of March 2021 with one Ithayam Arakattalai situated at Reserve Line, Madurai, run by the accused Nos.1 and 2. On 20.06.2021 at about 7.00 p.m, the administrator of the trust called the relative of Iswarya and intimated that her younger son was having very fever and admitted in Government Rajaji Hospital, Madurai. On the next day, on 21.06.2021, the defacto complainant went to the trust and at that time, the Director, Sivakumar @ Siva and one person, by name, Matharsha intimated that the child was affected by Corona and admitted in the Government Hospital and that no one was permitted to see the child. In order to prove the same, the said Matharsha sent a reference letter to the defacto complainant's mobile phone. While so, at around 2.00 p.m, the said Matharsha intimated that the child died due to Corona and the final rituals were held at Thathaneri crematory. Since the death was due to COVID, no one was allowed to see the body and the same was intimated to the parents also. When the defacto complainant asked about the details from the said Sivakumar, he was informed that the child was handed over to someone. The defacto complainant suspected the activities of the trust and lodged the complaint and the case has been registered as child missing. During the investigation, it was found that not only Iswarya's child, but also another child was sold to the petitioners and some other third parties, by creating bogus documents. Thereafter, the case was altered and nine named accused were arrayed as accused.

3. The learned counsel for the petitioners would submit that the petitioners are husband and wife and their marriage was solemnized in the year 2007. They are not having any issues out of their wedlock and therefore, both of them decided to adopt a child. Therefore, they have made several applications to several hospitals, trusts and other orphanage homes. Similarly, they have approached Ithayam Arakattalai and expressed their willingness to adopt a child legally. The Director of the Ithayam Arakattalai and other staff came to the petitioners' home and entrusted the child. They have also intimated that all the formalities for adoption will be done legally within one month, since the Courts are not functioning due to the pandemic situation. Believing their words, they took the child and signed in the documents prepared by the Ithayam Arakattalai. The said documents are right now in the custody of the said Arakattalai. He would further submit that the petitioners are innocents and they have not committed any offence as alleged by the prosecution and therefore, sought for grant of bail.

4. The learned Government Advocate (Crl. Side) for the respondent police, on instructions, would submit that the investigation is yet to be completed.

5. Considering the facts and circumstances of the case, nature of allegation levelled against the petitioners, the fact that since
<https://hcdirectories.pca.nic.in/hcdirectories/> have no issues, they applied for adoption through



various modes and that they have adopted the child through the first accused, by believing that the child has been transferred to them legally and also considering the period of incarceration, this Court is inclined to grant bail to the petitioners.

6. Accordingly, this Criminal Original Petition is ordered. The petitioners are directed to be released on bail on their executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.II, Madurai 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 petitioners shall report before the respondent Police daily at 10.30 a.m until further orders.

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

[d] the petitioners 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/-

24/08/2021

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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 JUDICIAL MAGISTRATE NO.II
MADURAI.

2.DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.

<https://hcservices.ecourts.gov.in/hcservices/>



3.THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.

4.THE OFFICER INCHARGE
SUB JAIL, NILAKOTTAI.

5.THE INSPECTOR OF POLICE,
TALLAKULAM POLICE STATION (L&O)
MADURAI CITY

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

**ORDER
IN**

CRL OP(MD) No.12109 of 2021
Date :24/08/2021

SA/JC/SAR.3/24.08.2021/4P/7C