



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 04/10/2021
PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD). No.14787 of 2021

Mathersha

...Petitioners/Accused No.2

Vs

State represented by,
The Inspector of Police,
Thallakulam Police Station,
Madurai.

In Crime No.760 of 2021

... Respondent/Complainant

For Petitioner : Mr.S.M.A.Jinnah, Advocate.

For Respondent : Mr.T.Senthilkumar

Additional Public Prosecutor

PETITIONS 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 petitioner/A2, who was arrested on 04.07.2021 for the offence under Sections 420, 468 and 471 I.P.C and Sections 80, 81 of J.J.Act @ 370(4), 370(5), 371, 468, 471 and 120(b) I.P.C and Sections 80 and 81 of J.J.Act in Crime No.760 of 2021 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the defacto complainant is a social worker. One Iswarya, W/o.Sonaiyan 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 high fever and admitted in Government Rajaji Hospital, Madurai. On the next day, on 21.06.2021, the complainant went to the trust and at that time, the



Director, Sivakumar @ Siva and the petitioner 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 petitioner sent a reference letter to the defacto complainant's mobile phone. While so, at around 2.00 p.m, the petitioner 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 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 appearing for the petitioner would submit that the petitioner never committed any offence as alleged by the prosecution. He has helped many underprivileged people and on seeing the good work of the petitioner, the first accused has invited him to his Idhayam Trust. The petitioner was working only on the instruction of the first accused and he has not aware of any offence as alleged against him. He would further submit that the petitioner is inside the prison from 04.07.2021 and therefore, he sought for grant of bail.

4. The learned Additional Public Prosecutor appearing for the respondent police would submit that the investigation is yet to be completed.

5.Considering the nature of offence, the earlier bail application in Crl.OP(MD).No.13428 of 2021 was dismissed by this Court on 16.09.2021. This is the second bail application. Though this Court directed the respondent police to file a report as to the role played by this petitioner, the respondent police has not filed any report so far and they are enabling the petitioner to come out on statutory bail. Considering the provision under Section 167(2) Cr.P.C, this Court is left with no other option than to grant bail to this petitioner.

6. Accordingly, this Criminal Original Petition is ordered. The petitioner is directed to be released on bail on their executing a bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) 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 petitioner shall report before the respondent Police daily at 10.30 a.m until further orders.

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

[e] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[f] 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]**.

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

sd/-

04/10/2021

/ 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 JUDICIAL MAGISTRATE NO.II, MADURAI.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.

3 THE INSPECTOR OF POLICE
THALLAUKULAM POLICE STATION, MADURAI CITY.

4 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

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

ORDER

IN

CRL OP(MD) No.14787 of 2021

Date :04/10/2021

MK/SKN/SAR.IV/04.10.2021/3P/6C

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