



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

Date : 04/01/2021

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD). No.15914 of 2020

Vicky @ Vigneshwaran.B ... Petitioner/Sole Accused

Vs

State Rep. by
The Sub Inspector of Police,
Arumuganeri Police Station,
Thoothukudi District.
(Crime No. 413/2020). ... Respondent/Complainant

For Petitioner : Mr.Kishore.C,
Advocate.
For Respondent : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.Side)

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

PRAYER :- For Bail in Crime No.413 of 2020 on the file of the respondent police.

ORDER : The Court made the following order :-

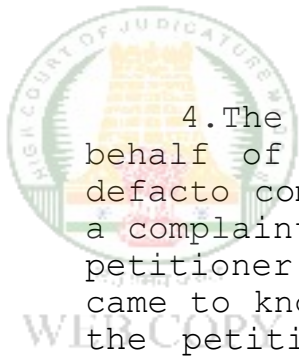
The petitioner, sole accused herein was arrested and remanded to judicial custody on 08.12.2020 for the alleged offences under Section 363 of IPC @ under Section 363 of IPC and Sections 3(a) and 4 of the protection of Children from Sexual Offences Act, 2012, in Crime No.413 of 2020, on the file of the respondent Police, seeks bail.

2.The case of the prosecution is that the defacto complainant is the mother of the victim minor girl, she is working as sanitation worker in Kayalpattinam Municipality, she is having one son and one daughter. On 01.12.2020, in the morning she went to work as usual and his son went to tuition and the victim girl was alone in the house. After completion of her work, she came to her house, at that time, the victim girl was found missing. Thereafter, she came to know that her daughter was taken by the petitioner in his bike in
<https://hcmvcs.eports.gov.in/fc3ev043/> a.m. Therefore, the defacto complainant went to the



petitioner's house and enquired about her daughter, the mother of the petitioner told her that the petitioner had taken the victim girl and she would hand over the victim girl by evening. Thereafter, the victim girl had not come back. Hence, she lodged a complaint before the respondent police on 02.12.2020 and a case was registered in Crime No.413 of 2020, for the offence under Section 363 of IPC. During the investigation, it was found that the petitioner had taken the victim girl on the guise of visiting a temple. Thereafter, the petitioner and the victim girl had gone to the petitioner's brother's house and thereafter, he had taken the victim girl to various places and the petitioner had committed penetrative sexual assault on her. Finally, the police arrested the petitioner on 08.12.2020 and secured the victim girl and the victim girl was produced before the judicial Magistrate and the statement of the victim girl under Section 164 Cr.P.C was recorded on 15.12.2020. Hence, the petitioner and the victim girl were subjected to medical examination. During enquiry, it was found that the victim girl and the petitioner loved each other and due to which, they had eloped.

3.The learned counsel appearing for the petitioner submitted that the petitioner is a first year college student and and he is studying B.A., Economics. The petitioner and the victim girl are residing in the same locality. The victim girl's brother and the petitioner are friends, got acquainted, the petitioner and victim developed love relationship started exchanging messages through mobile phones. He further submitted that the victim girl's mother was making arrangements for the victim girl's marriage against her wish, due to which, the victim girl forced the petitioner to take her from her mother's house. Hence, the petitioner was compelled to take the victim girl otherwise, she would end her life. Thereafter, the petitioner joined the victim girl and stayed in his brother's house. In fact, the family members of the petitioner informed the victim girl's mother about their presence. Thereafter, the respondent police came there and secured the victim girl. The victim girl informed her mother the defacto complainant not to take any action against the petitioner and his family members. The defacto complainant agreed for the same and the victim girl was secured. He further submitted that the victim girl forced the petitioner to save her from the forced marriage, contemplated by her mother, due to the pressure and compulsion of the victim, the petitioner had accompanied her, the petitioner has nothing to do with the alleged penetrative sexual assault. The victim girl not stated anything about the petitioner committing any penetrative sexual assault on her. The petitioner is aged about 19 years and due to incarceration, his future will be affected. He further submitted that the victim girl is still in love with the petitioner and she refused to join her mother/defacto complainant and she is staying at a home. He further submitted that the petitioner and the victim girl, due to adolescence and infatuation had eloped. Hence,



4.The learned Government Advocate (Crl. Side) appearing on behalf of the respondent Police submitted that in this case the defacto complainant is the mother of the victim girl and she lodged a complaint on 02.12.2020 stating that her daughter was taken by the petitioner in his motor bike. Thereafter, the defacto complainant came to know that the victim girl and the petitioner were staying in the petitioner's brother's house. Later, the respondent police arrested the petitioner and secured the victim girl on 08.12.2020, brought her later victim was produced before the Judicial Magistrate on 15.12.2020 and 164 Cr.P.C., statement recorded from the victim girl, in which, she had not stated anything about the sexual assault and she had narrated only the events. The petitioner and the victim girl had been subjected to medical examination.

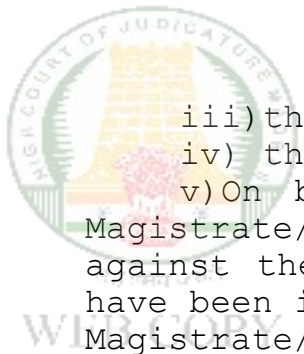
5.Considering the facts and circumstances of the case and also considering the rival submissions on either side and on perusal of the materials available on records, it is seen that the victim girl was aged about 17 years and the petitioner is aged about 19 years, both are residing in the same locality and they loved each other and the petitioner took the victim girl in his motor bike to his brother's house and to various places on the compulsion of victim. In 164 Cr.P.C., statement of the victim girl, it is seen that the victim girl has voluntarily went along with the petitioner and she had not stated about any penetrative sexual assault. Further, it is seen that the victim girl has called her mother, informed her about her presence along with the petitioner and requested the defacto complainant not to take any action against the petitioner and his family members. After the respondent Police secured the victim girl, the mother of the victim girl/defacto complainant is now not approving the relationship of the victim girl with the petitioner. Hence, the victim girl refused to live with her mother and presently staying at a home. It is seen that there is a strong bondage and love between the petitioner and the victim girl.

6.In view of the above facts and circumstances of the case and taking into consideration the period of incarceration, this Court is inclined to grant bail to the petitioner subject to the following conditions:

7.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 learned PocsO Court, Thoothukudi.

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 once in a week (i.e.,) Every Sunday 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 petitioners 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 petitioner/accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-
04/01/2021

/ 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 JUDGE,
POCSO COURT, THOOTHUKUDI.
- 2 THE SUB INSPECTOR OF POLICE,
ARUMUGANERI POLICE STATION,
THOOTHUKUDI DISTRICT.
- 3 THE OFFICER INCHARGE,
PERAORANI SUB JAIL AT PERAORANI,
THOOTHUKUDI DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.C.KISHORE, Advocate (SR-17[I] dated 04/01/2021)

ORDER
IN
CRL OP(MD) No.15914 of 2020
Date :04/01/2021

VSG

<https://hcma.ces.gov.in/CaseDetails.aspx?CaseNo=2021/4P/6C>