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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 01/12/2021

PRONOUNCED ON: 06/12/2021

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.18905 of 2021

Mahesh,

... Petitioner/Sole Accused

Vs

State Rep by,
The Inspector of Police,
All Women Police Station,
Thanjavur,
Thanjavur District
Crime No. 13 of 2021).

... Respondent/Complainant

For Petitioner : MR.P.M.Vishnuvarthanan, Advocate

For Respondent : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor

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

PRAYER :-

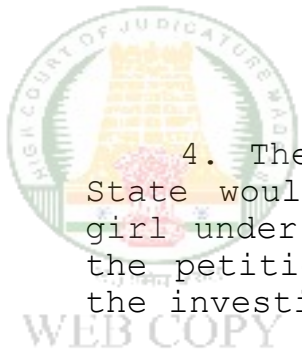
For Bail in Crime No. 13 of 2021 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner/sole accused, who was arrested and remanded to judicial custody on 31.10.2021 for the offence punishable under Sections 3(a), 3(b), r/w 4(1), 9(1), 9(m), 9(n), r/w 10 of POCSO Act and 506(1) I.P.C., in Crime No.13 of 2021, on the file respondent police, seeks bail.

2. The case of the prosecution is that the victim girl is aged about 16 years and the petitioner is aged about 40 years and he committed sexual harassment on the victim girl. Hence, the present complaint.

3. The learned Counsel for the petitioner would submit that the petitioner is innocent and he has been falsely implicated in this case and he is under judicial custody from 31.10.2021 and hence, he seeks bail to the petitioner.



4. The learned Additional Public Prosecutor appearing for the State would submit that a statement was recorded from the victim girl under Section 164 Cr.P.C., and it reveals the misbehaviour of the petitioner with the victim girl. He would further submit that the investigation is at early stage.

5. Heard the learned Counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State and perused the materials placed on record.

6. Admittedly, the defacto complainant is the elder brother's wife of the petitioner and the victim girl is the daughter of the defacto complainant. The main contention of the petitioner is that the defacto complainant had ego-clash with the petitioner's parents and she never respected any one of the family members of the petitioner, that she was the main reason for the petitioner's divorce and there existed family disputes with respect to the properties and that in order to wreak vengeance, a false complaint has been lodged against the petitioner. He would further submit that for the occurrence allegedly held 9 years ago, the complaint came to be lodged on 30.10.2021 and that the petitioner was arrested on 31.10.2021.

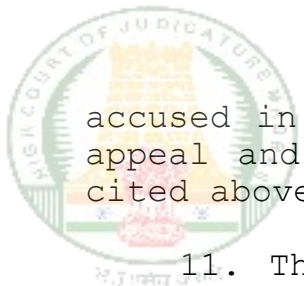
7. The learned Counsel for the petitioner would submit that the defacto complainant had also lodged two complaints against the petitioner's father alleging dowry harassment and that after enquiry, the same were ordered to be closed.

8. The learned Counsel for the petitioner, in support of his arguments, relied on the following judgments of the Honourable Supreme Court:

- (i) ***Sham Singh Vs. State of Haryana*** reported in **(2018)18 SCC 34**;
- (ii) ***Vimal Suresh Kamble Vs. Chaluverapinake Apal S.P and another*** reported in **(2003)3 SCC 175** ; and
- (iii) ***Mohd.Zahid Vs. The Govt. of NCT of Delhi***, reported in **(1998)5 SCC 419**.

9. The above judgments were rendered in Criminal Appeals filed challenging the conviction and sentence imposed on the accused therein.

10. The Honourable Supreme Court, by considering the evidence adduced, held in the first case cited above, that the trial Court and the High Court had convicted the accused merely on conjectures and surmises, in the second case cited above, that the evidence of the prosecutrix does not inspire the confidence and are unreliable and in the third case, that the prosecution has cooked up a false story against the accused, has allowed the appeals and acquitted the



accused in the first and third cases cited above and dismissed the appeal and confirmed the judgment of acquittal in the second case cited above.

11. The learned Counsel for the petitioner has further relied upon the judgment of the Honourable Supreme Court in **Kapil Agarwal and Others Vs. Sanjay Sharma and Others** reported in **(2021)3 SCALE 325**, which was rendered in Criminal Appeal challenging the dismissal of the writ petition filed for quashing the F.I.R., and the Honourable Apex Court, holding that the impugned F.I.R., therein was nothing but an abuse of process of law and the same is said to be filed with a view to harass the appellants, has allowed the appeal.

12. In the case on hand, the petitioner has filed the application for bail under Section 439 Cr.P.C. Considering the above, this Court is at loss to understand as to how the above judgments are supporting the case of the petitioner.

13. The learned Counsel for the petitioner would submit that the delay in lodging the complaint is fatal to the prosecution and that therefore, the petitioner is entitled to get the benefit.

14. It is settled law that the delay in lodging the F.I.R., by itself is not a ground to doubt the prosecution. Considering the nature of the charges alleged, the delay in preferring the complaint for POCSO offences cannot be considered as fatal and a valid ground for enlarging the petitioner on bail.

15. In the case on hand, the learned Additional Public Prosecutor has produced the copy of the statement recorded under Section 164 Cr.P.C., from the victim girl and whereunder the victim girl has specifically narrated the incidents in which, the petitioner had allegedly misbehaved with her.

16. Considering the seriousness and gravity of the offences alleged and also the facts that the petitioner is in custody only from 31.10.2021, and that investigation is in early stage as stated by the learned Additional Public Prosecutor, this Court is not inclined to grant bail to the petitioner at this point of time.

17. In the result, this Criminal Original Petition is dismissed.

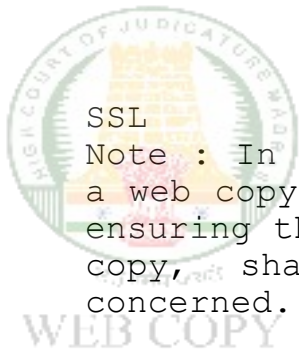
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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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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 INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION, THANJAVUR,
THANJAVUR DISTRICT.
- 2 THE OFFICER INCHARGE,
THE SUB JAIL, THANJAVUR.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.VISHNUVARTHANAN.P.M. Advocate SR.No.37514(I)

ORDER

IN

CRL OP(MD) No.18905 of 2021

Date :06/12/2021

PKP/JC/SAR-4/13.12.2021/4P/5C