



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Dated: 21/12/2021

PRESENT

The Hon'ble Mr.Justice G.ILANGO VAN

Cr1.OP(MD)No.19515 of 2021

Raju

... Petitioner/Sole Accused

Vs.

State rep.by
The Inspector of Police,
All Women Police Station,
Musiri, Trichy District.
(Crime No.9 of 2021)

... Respondent/Complainant

For Petitioner : M/s.B.Jeyakumar, Advocate

For Respondent : M/s.R.Meenakshisundaram
Additional Public Prosecutor

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

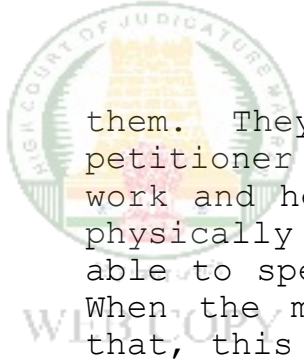
PRAYER :-

For Bail in Crime No.9 of 2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner was arrested on 26/05/2021 and remanded to judicial for the alleged offences punishable under sections 376(2)(f)(j)(k)(l) of IPC in Crime No.9 of 2021 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that the petitioner is the father of the victim. The de-facto complainant is the elder daughter of this petitioner and sister of the victim. The petitioner was married to one Jeyalakshmi. Through Jeyalakshmi, two daughters namely the de-facto complainant and the victim girl were born to



them. They have also one son. Jeyalakshmi died two years back. The petitioner was working as Coolie and doing building construction work and he is taking care of the victim girl namely Sudha, who is physically handicapped and mentally retarded by birth. She is not able to speak and do her work herself because of her birth illness. When the mother was alive, she was taking care by her and after that, this petitioner was taking care the victim girl Sudha. She was admitted in Thuraiyur Government Hospital on 21/05/2021. On information, the de-facto complainant went to see her, at that time she was told that Sudha was 6 months pregnant. After that, the de-facto complainant lodged the complaint suspecting the involvement of this petitioner. Based upon the above said complaint, the case in Crime No.376(2)(i)(j)(k)(l) of IPC has been registered and the petitioner was arrested on 26/05/2021 and ever-since he is in custody.

3. According to the learned counsel for the petitioner, in fact the de-facto complainant has not given any complaint and the police got her signature and foisted this false case. One Karuppaya used to come to his house and had intercourse with the said Sudha, by taking advantage of her mental illness. In this regard, the case was registered in Crime No.21 of 2021 under section 376 IPC. Since the police was not in a position to fix the real accused, foisted this case against this petitioner based upon the petition and he is in custody for 160 days.

4. The learned Additional Public Prosecutor would submit that only based upon the complaint given by the daughter of the petitioner, this case has been registered and final report was also filed before the Judicial Magistrate, Thuraiyur. Now, it has been taken cognizance in PRC No.13 of 2021. He would further submit that by taking advantage of the mental and physical illness of the victim, this petitioner has committed the heinous crime, who is the father of the victim girl.

5. The petitioner moved bail application before the Principal District Judge, Trichy, in CrI.MP No.3449 of 2021 and that came to be dismissed on 13/09/2021 stating that considering the heinous nature of the offence, if the petitioner is released on bail, there is every possibility of tampering the evidence and so the court was of the opinion that it is not a fittest case for granting bail.

6. Heard both sides.

7. It is very unfortunate to note that the victim girl, who is the daughter of the petitioner has subjected to rape.

8. According to the petitioner, one Karuppaya is the real culprit in this matter and in this regard, a case in Crime No.21 of 2021 has been registered under sections 376(2)(j), (i), (n) and 450, 294(b), 506(1) IPC. The case has been registered on 01/09/2021. So far as this petitioner is concerned, the date of occurrence is



stated to be on 19/12/2020 and the date of FIR is stated to be 26/05/2021, which means that within four months, the case in Crime No.21 of 2021 has been registered against the above said Karuppaya. The de-facto complainant in the above said matter is one Papathi. The Papathi is the own mother of this petitioner. So according to her, on 21/08/2021 at about 2.00 pm, when she went to the place, where the victim was put and she found that this petitioner was committing rape on the victim and the above said Karuppaya caught hold by village people and on the next day, the case has been registered. In view of that, the accused was also arrested and subject to medical examination, so also the victim girl. The draft final report is also made ready in the above said case. The de-facto complainant namely Papathi also reiterated the very same statement before the Magistrate under section 164 Cr.P.C.

9.Now the learned counsel appearing for the petitioner would submit that no DNA test report has been received. If the DNA report is received, it will bring light that the petitioner has not committed any offence, which is a matter for trial process.

10.Simply because the DNA test was not received , the petitioner cannot take advantage of the same. Even on the date of occurrence, in this case namely on 26/05/2021, the victim girl was found to be pregnant more than 5 months. Whether this petitioner is involved in the above said heinous crime and the above said Kuruppaya is involved in this matter or not, is a matter for trial.

11.During the course of argument, the learned counsel appearing for the petitioner would submit that even the de-facto complainant is ready to give a statement to the effect, she has not given any complaint against this petitioner. Such thing cannot be taken into account, since final report has been filed before the concerned court and the concerned court can take the evidence of PW1 and if anything is in favour of the petitioner during the course of trial process, is disclosed, he can take the benefit till the trial process is over. So, I am of the considered view that this is not a fittest case to enlarge the petitioner on bail and if the petitioner is released on bail, there is every likelihood of tampering the evidence as well as the victim girl. Since the victim girl is not in a position to speak, whether she can be capable of giving evidence by way of gesture, is also a matter for consideration before the trial court.

12.Further perusal of the records shows that on 26/05/2021, the de-foetus was removed from the victim girl. So similarly the DNA test is not received as mentioned by the learned counsel for the petitioner, it will throw much light upon the controversy. So this court is not inclined to grant bail to the petitioner, even though the petitioner is in custody for several months.



13. In the result, this petition is **dismissed**.

WEB COPY

Sd/-
21/12/2021

/ TRUE COPY /

/ /2021
Sub-Assistant Registrar (C.S.I)
Madurai Bench of Madras High Court,
Madurai - 625 023.

ER

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,
MUSIRI, TRICHY DISTRICT.
2. THE SUPERINTENDENT,
CENTRAL PRISON,
TRICHY, TRICHY DISTRICT.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL OP(MD) No.19515 of 2021
Date :21/12/2021

SP/VR/SAR I/28/12/2021/4P/4C