



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 23/12/2021

WEB COPY

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.20130 of 2021

Mahesh, ... Petitioner/Petitioner/Sole Accused

Vs

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

... Respondent/Respondent/Complainant

For Petitioner : M/s. Vishnuvarthanan.P.M,
Advocate.

For Respondent : Mr.RMS.Sethuraman,
Additional Public Prosecutor

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

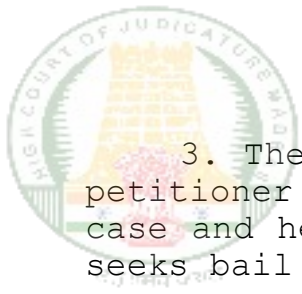
PRAYER :-

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.

WEB COPY

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.

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.

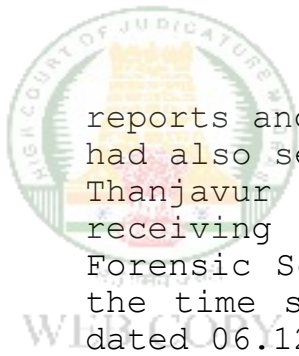
6. No doubt, the petitioner's earlier application made in CrI.O.P.(MD)No.18905 of 2021 was dismissed by this Court vide order dated 06.12.2021.

7. The learned Counsel for the petitioner would submit that the petitioner has already filed a petition in CrI.O.P.(MD)No.19213 of 2021 seeking orders to quash the F.I.R., in Cr.No.13 of 2021 and the learned Single Judge of this Court, vide order dated 06.12.2021 directed the respondent police to file a final report on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of that order and also directed the Investigating Officer to take note of the petitioner's contentions. He would further submit that the defacto complainant has lodged a false and frivolous complaint against the petitioner's father, who is the father-in-law of the defacto complainant and that after enquiry by the police, the same were ordered to be closed. The defacto complainant, for the alleged incident occurred in 2012 and 2019 lodged the complaint on 30.10.2021.

8. It is not in dispute that the defacto complainant is the wife of the petitioner's elder brother and the victim girl is the daughter of the defacto complainant.

9. The learned Counsel for the petitioner would submit that the petitioner was in a foreign country at the time, when the said occurrence in 2012 alleged to have been taken place.

10. The respondent has filed a status report stating that taking note of the petitioner's contentions that he was in a foreign country when the said occurrence alleged to have taken place, they sent an emergent letter to the Regional Passport office at Trichirappalli as well as in Chennai to furnish his passport details and also the dates of travel to other countries by the petitioner/accused. In the status report, it has been further stated that on 22.11.2021, the respondent has sent a letter to the Services, Tamil Nadu Police Laboratory, Thanjavur to prioritize the medical



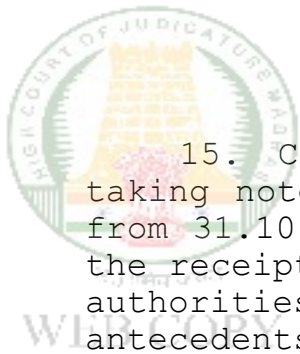
reports and later on 20.12.2021, the Deputy Superintendent of Police had also sent a letter to the Director, Forensic Science Laboratory, Thanjavur to prioritize and expedite the reports and that after receiving the reports from the Regional Passport Officer and the Forensic Science Laboratory, they will file the final report within the time stipulated by this Court in Crl.O.P.(MD)No.19213 of 2021, dated 06.12.2021.

11. As rightly pointed out by the learned Counsel for the petitioner, this Court, in Crl.O.P.(MD)No.19213 of 2021, which was filed seeking quashment of the impugned F.I.R., in Cr.No.13 of 2021, the learned Single Judge, by observing that it is not possible for this Court to consider the contentions of the petitioner, in view of the nature of offences and the nature of the allegations, that would necessarily involve embarking on a factual analysis and probe and therefore, taking into account the overall facts and circumstances of the case, directed the respondent to file a final report on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of that order. No doubt, as rightly pointed out by the learned Counsel for the petitioner, the learned Single Judge has further directed the Investigating Officer to take note of the contentions of the petitioner raised in the quash petition and also directed the learned Additional Public Prosecutor to forward a copy of the memorandum of grounds to the respondent who has to bear the same in mind while filing the final report.

12. It is evident from the records that the complaint came to be lodged on 30.10.2021 for the offences alleged to have been committed on 27.05.2012 and on 28.05.2012 and totally for 5 days, when the victim girl was staying in the house of her grandparents at Thanjavur and the incident alleged to have occurred on 01.09.2019 in the house of the defacto complainant at Chennai. Even according to the defacto complainant, she came to know about the alleged incident only on 21.10.2021 and thereafter, after discussing with her husband, she had lodged the present complaint.

13. The main contention of the petitioner is that the defacto complainant had enmity with the petitioner and the petitioner's parents, that she had already lodged the complaint against the petitioner's father alleging dowry harassment and that after enquiry by the police, the same were ordered to be closed. The learned Counsel for the petitioner would further submit that only to wreak vengeance, the above complaint came to be lodged.

14. It is evident from the CD file that the Investigating Officer has recorded statements of some of the witnesses and according to them, the medical reports are yet to be received. Moreover, in order to ascertain the genuineness of the claim of the petitioner that he was in a foreign country in 2012, they have already sent a requisition to the Regional Passport Officers at Chennai and the reports are yet to be received.



15. Considering the above facts and circumstances and also taking note of the fact that the petitioner is in judicial custody from 31.10.2021, that the investigation is almost completed, except the receipt of the medical records and the reports from the Passport authorities and that the petitioner is not having any bad antecedents as stated by the learned Additional Public Prosecutor, this Court is inclined to grant bail to the petitioner subject to the following conditions:

16. Accordingly, the petitioner is ordered to be released on bail on his 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 Sessions Judge, Special Court for POCSO Act Cases, Thanjavur and on further conditions that;

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 daily at 10.30 a.m until further orders;

iii)the petitioner shall not tamper with evidence or witness.

iv) the petitioner is directed not to leave the Country without the permission of this Court;

v)the petitioner shall not abscond during trial.

vi)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]***.

vii) If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-
23/12/2021

/ TRUE COPY /

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

SSL

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.

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



TO

1. The learned Sessions Judge,
Special Court for POCSO Act Cases, Thanjavur
2. The Officer Incharge,
The Sub Jail, Thanjavur.
3. The Inspector of Police,
All Women Police Station,
Thanjavur,
Thanjavur District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.P.M.VISHNUVARTHANAN, Advocate (SR-9706[I] dated
23/12/2021)

ORDER IN
CRL OP(MD) No.20130 of 2021
Date : 23/12/2021

TR/JC/SAR-IV(23.12.2021) 5P 6C