



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2022

CORAM:

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P.No.2990 of 2022

Sakthivel

...Petitioner

Vs.

The State rep. by
The Inspector of Police
All Women Police Station,
Poonamallee,
Tiruvallur District.
(Crime No.985 of 2021)

(Originally registered by
The Inspector of Police,
Mangadu Police Station,
Kancheepuram District and
later transferred to the respondent)

... Respondent

PRAYER: Criminal Original Petition has been filed under Section 439 of Criminal Procedure Code, 1973 praying to enlarge the petitioner on bail in Crime No.985 of 2021 on the file of the Inspector of Police, All Women Police Station, Poonamallee, Tiruvallur District.

For Petitioner : Mr.S.Senthilkumar

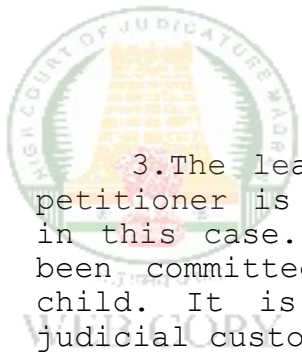
For Respondent : Ms.G.V.Kasthuri
Additional Public Prosecutor

ORDER

(The case has been heard through video conference)

The petitioner who was arrested and remanded to judicial custody on 06.01.2022 for the offences under Section 366(A) of I.P.C and Section 5(1) read with 6 of POCSO Act in Crime No.985 of 2021, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the minor daughter of the defacto complainant aged about 16 years was kidnapped and sexually abused by the petitioner. Hence the complaint.



3. The learned counsel for the petitioner would submit that the petitioner is an innocent person and he has been falsely implicated in this case. He would further submit that the alleged offence has been committed by the petitioner only with consent of the minor child. It is his specific submission that the petitioner is in judicial custody from 06.01.2022 onwards. Hence, he prays for bail.

4. M/s.G.V.Kasthuri, learned Additional Public Prosecutor appearing for the respondent police raised objection stating that the victim child in this alleged offence is 16 years old and after knowing the fact that she is a minor child, the petitioner committed this offence. However she admits the alleged offence had taken place with the consent of the victim child.

5. The submissions made by the learned Counsel on either side are considered.

6. The respondent police registered a case as against the petitioner for the offences punishable under Section 366(A) of I.P.C and Section 5(1) read with 6 of POCSO Act. Admittedly, the petitioner and the victim child are the relatives and stayed in the same room. During the relevant point of time, both of them are eloped from their house and after reaching Tiruvannamalai, the petitioner herein tied 'thaali' to the victim child and later they resided in Tiruvannamalai itself. Though the alleged offence committed by the petitioner is with the consent of the victim child, considering the fact that the victim is a minor child, it may not be construed that consent obtained by the petitioner is a legal consent. However, he is in judicial custody from 06.01.2022 onwards and as of now, a portion of investigation has been completed. Hence in view of the same, this Court is inclined to grant bail to the petitioner subject to the following conditions:

(a) the petitioner is ordered to be released on bail to execute 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 learned Sessions Judge, Special Court for exclusive Trial of cases under POCSO Act, Chengalpattu.

(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) the petitioner shall report before the respondent police daily at 10.00 a.m. until further orders;

(d) the petitioner shall not tamper with evidence or witness either during investigation or trial;



(e) on breach of any of the aforesaid conditions, the learned Judicial 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];

(f) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

7. With the above directions, this Criminal Original Petition is ordered.

-sd/-

15/02/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SESSIONS JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES
UNDER POCSO ACT, CHENGALPATTU.

2 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
POONAMALLEE, THIRUVALLUR DISTRICT.

3 THE INSPECTOR OF POLICE,
MANGADU POLICE STATION,
KANCHEEPURAM DISTRICT.

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

CC to M/S S. SENTHILKUMAR Advocate on payment of necessary charges

CRL OP.2990/2022

Date :15/02/2022

CSK 16/02/2022