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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Cr1.O.P.No.3388 of 2022

Dhinesh @ Muthu

...Petitioner/Accused

versus

State rep. by
The Inspector of Police
All Women Police Station,
Sirkazhi,
Mayiladuthurai District.
(Crime No.05 of 2022)

... Respondent /Complainant

PRAYER: Criminal Original Petition has been filed under Section 439 of Cr.P.C., praying to enlarge the petitioner on bail pending investigation in Crime No.05 of 2022 on the file of the respondent police.

For Petitioner : Mr.M.Vijayaragavan

For Respondent : Mrs.G.V.Kasthuri

Additional Public Prosecutor

ORDER

The petitioner, who was arrested and remanded to judicial custody on 24.01.2022 for an offence punishable under **Section 366 of IPC and under Section 5(1) r/w. 6 of POCSO Act, 2012** in Crime No.05 of 2022, on the file of the respondent police, seeks bail.

2. The case of the prosecution is the defacto complainant has lodged a complaint before the respondent police alleging that the petitioner herein had kidnapped her daughter, who was aged about 17 years. Hence, the respondent police registered a case against the petitioner.

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 occurrence



happened with the consent of the victim child. In otherwise, the petitioner is no way responsible for the occurrence as alleged by the prosecution. The petitioner is in judicial custody from 24.01.2022 and hence, he prays for bail.

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4. The learned Additional Public Prosecutor appearing for the respondent police raised objection stating that investigation is pending. She also produced the statement under Section 164 (5) Cr.P.C., recorded from the victim child. However, she would submit that the petitioner is a first time offender and the alleged occurrence had happened with the consent of the victim.

5. Considered the submissions made by the learned counsel appearing on either side. The statement recorded under Section 164 (5) Cr.P.C., from the victim child placed before this Court was also perused.

6. The respondent police registered a case against the petitioner for the offence punishable under Section 366 of IPC and under Section 5(1) r/w. 6 of POCSO Act, 2012. The averments found in the above referred statement as well as the submission made by the learned Additional Public Prosecutor appearing for the respondent police would disclose the fact that the victim child and the petitioner fell in love with each other and at that time, since the parents of the victim child arranged the marriage for the victim child, both the victim child and the petitioner eloped from their respective village and later they stayed in various places and committed the offence as alleged by the prosecution. Therefore, for the alleged occurrence the victim child also may be one of the reason. As of now, a portion of the investigation is completed and further, the petitioner is in judicial custody from 24.01.2022 onwards.

7. Therefore, taking note of all the above said aspects into consideration and the fact that the petitioner is in incarceration from 24.01.2022 onwards, this Court is inclined to grant bail to the petitioner subject to certain conditions.

8. Accordingly, the petitioner is ordered to be released on bail subject to the following conditions;

(a) the petitioner shall 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 the learned Sessions Judge, Special Court under POCSO Act, Nagapattinam;

(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 is directed to appear 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.

-sd/-

24/02/2022

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

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

TO

1 THE SESSIONS JUDGE
SPECIAL COURT UNDER POCSO ACT,
NAGAPATTINAM.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
SIRKAZHI, MAYILADUTHURAI DISTRICT.

4 THE OFFICER INCHARGE
SUB JAIL, THARANGAMPADI.

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

CRL OP.3388/2022

Date :24/02/2022

TA-25/02/2022