



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Cr1.O.P. No. 4218 of 2022

Senathipathi

... Petitioner / Accused

versus

State rep by
Inspector of Police,
Namakkal Police Station.
(Crime No.1821 of 2021)

...Respondent /Complainant

PRAYER: Criminal Original Petition has been filed under Section 439 of Cr.P.C., praying to enlarge the petitioner on bail in Crime No.1821 of 2021 on the file of the respondent police.

For Petitioner

: Mr.G.Munuraj

For Respondent

: Mrs.G.V.Kasthuri
Additional Public Prosecutor

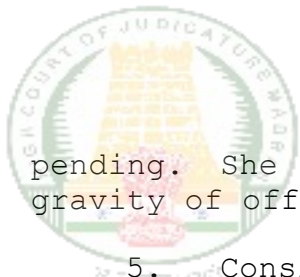
ORDER

The petitioner, who was surrendered and remanded to judicial custody on 28.12.2021 for the offences punishable under Section Girl Missing and subsequently altered into Section 366 of IPC, Section 5 (1) & 6 of POCSO Act and 9 of Child Marriage Act, in Crime No.1821 of 2021, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the petitioner has kidnapped the de facto complainant's daughter, who is aged about 15 years and committed child marriage. 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, during the relevant point of time, both the victim and the petitioner fell in love with each other and eloped from their respective family. It is his specific submission that the petitioner is in judicial custody from 28.12.2021 onwards. Hence, he prays for bail.

4. The learned Additional Public Prosecutor appearing for the respondent police raised objection stating that investigation is



pending. She vehemently opposed this petition stating that, the gravity of offence committed by the petitioner, is severe in nature.

5. Considered the submissions made by the learned counsel appearing on either side. The respondent police registered a case against this petitioner for the offences punishable under Section Girl Missing and subsequently altered into Section 366 of IPC, Section 5(1) & 6 of POCSO Act and 9 of Child Marriage Act. The averments found in the First Information Report and 164(5) Cr.P.C. statement given by the victim child would disclose the fact that the victim child and the petitioner were fell in love with each other and ultimately, they eloped to Athur and after solemnizing marriage, the petitioner herein, indulged in sexual activity with the victim child. Though the petitioner has got consent from the victim child, being the reason that the victim child is below the age of minor, it cannot be said that the same is legal consent. However, the petitioner is in judicial custody from 28.12.2021 onwards.

6. Therefore, taking note of all the above said aspects into consideration, particularly, the consent given by the victim child is the reason that the petitioner is in incarceration from 28.12.2021, this Court is inclined to grant bail to the petitioner subject to certain conditions.

7. 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 (Fast Track Mahila Court), Namakkal;

(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.

WEB COPY

-sd/-

21/02/2022

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,
(FAST TRACK MAHILA COURT),
NAMAKKAL.

2 THE INSPECTOR OF POLICE,
NAMAKKAL POLICE STATION,
NAMAKKAL DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1CC to M/S.G.MUNURAJ Advocate on payment of necessary charges
SR.No.2690

CRL OP.4218/2022

Date :21/02/2022

CSK 22/02/2022