



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2022

CORAM:

THE HON'BLE MR.JUSTICE DR.G.JAYACHANDRAN

Cr1.O.P.No.4578 of 2022

Kamesh

.. Petitioner

Vs.

The State rep. by
The Inspector of Police,
All Women Police Station,
Sriperumbudhur,
Kancheepuram District.
(Crime No.01 of 2022)

.. Respondent

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.01 of 2022 on the file of the respondent police.

For Petitioner : Mr.A.C.Chidambaram

For Respondent : M/S.G.V.Kasthuri
Additional Public Prosecutor

O R D E R

The petitioner, who was arrested and remanded to judicial custody on 10.01.2022 for the offences punishable under Sections 363, 365, 366, 376(2)(n) and 376(3) of IPC and Sections 5(1),5(j)(ii) read with Section 6 of POCSO Act 2012 and Section 9 of Prohibition of Child Marriage Act 2006 in Crime No.01 of 2022, on the file of the respondent police, seeks bail.

2. As per the First Information Report, the victim girl aged 16 years old, who had fallen love with the petitioner herein, had married the petitioner knowing that such marriage has been restrained under the Act and living with him. Due to the relationship, she got pregnant. When she went to the hospital for delivery, the matter came to light and a case has been registered by the respondent police for the abovesaid offence on 08.01.2022. The petitioner was subsequently



arrested. The petitioner herein has sought bail on the ground that he and the defacto complainant voluntarily married and living as husband and wife. It is because of wife below the age of 18, the police has registered case against the petitioner without proper investigation. Now, his wife has given birth to a female child and she is living in her parents house.

3. Learned Additional Public Prosecutor appearing for the respondent submitted that being a child, aged 14, the act of the petitioner herein squarely falls under the Prohibition of Child Marriage Act and POCSO Act. The petitioner is liable to be prosecuted and punished, even it was a consensual sexual relationship. For this purpose, when this Court asked the the learned Public Prosecutor to produce any evidence that the victim girl is below aged 18 years at the time of the alleged marriage, the learned Public Prosecutor is unable to produce the document to that effect except some opinion given by the doctor.

4. The case was registered on 08.01.2022 and the petitioner was arrested soon thereafter on 10.01.2022 even after lapse of more than 50 days, the investigation could not ascertain the age of the victim girl and produce document to show that she has not attained the age of 18. Even otherwise, taking into note that before arrest, the petitioner and the victim girl were living as husband and wife and the petitioner is ready to take care of the victim girl and the child, it is appropriate to grant bail to the petitioner subject to certain conditions.

5. Considering the rival submissions, 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.50,000/- (Rupees Fifty Thousand only) with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for Exclusive trial of case 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 is directed to appear before the Investigating Officer as and when required.

(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.

It is open to the respondent police for cancellation of the bail granted, if the petitioner involves in similar nature of case in future.

-sd/-

01/03/2022

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

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
SRIPERUMBUDHUR, KANCHEEPURAM DISTRICT.

+1 CC to M/S.R.SASIKUMAR Advocate on payment of necessary charges SR.NO. 3122

CRL OP.4578/2022

Date :01/03/2022

RW 02/03/2022