



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2022

CORAM:

THE HON'BLE Dr. JUSTICE G.JAYACHANDRAN

Cr1.O.P.No.5370 of 2022

K.Sathayanarayanan

... Petitioner

Vs.

State rep. by
The Inspector of Police,
All Women Police Station,
W-33, Madhavaram, Chennai.
(Crime No.29 of 2021)

... Respondent

PRAYER: Criminal Original Petition has been filed under Section 439 of Cr.P.C praying to enlarge the petitioner on bail in connection with the Crime No.29 of 2021 on the file of the respondent police.

For Petitioner : Mr.C.Preethivraj

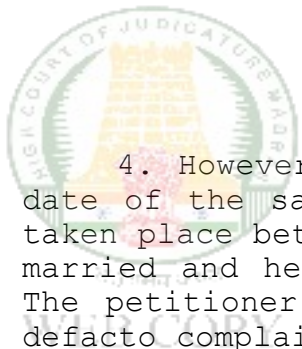
For Respondent : M/s.G.V.Kasthuri
Additional Public Prosecutor

ORDER

The petitioner, who was arrested and remanded to judicial custody on 18.12.2021 for the offences punishable under Sections 328, 376, 506 (ii) IPC & Sec. 5(f)(u) r/w Sec. 6,11(5) r/w 12 and 17 of POCSO Act, 2012 in Crime No.29 of 2021, on the file of the respondent police, seeks bail.

2.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent.

3. The petitioner was arrested on 18.12.2021 based on the complaint given on the same day by the defacto complainant, alleging that the defacto complainant was subjected to penetrative sexual offence in the year 2016 (when she was 17 years old) by the petitioner herein and his wife abducted the crime.



4. However, the complaint was given only after 5 years from the date of the said incident occurred. In between, several events have taken place between these period. Firstly, the defacto complainant got married and her husband has gone to foreign to earn for livelihood. The petitioner herein took advantage of the situation compelled the defacto complainant to visit his place privately to satisfy his carnal pleasure and he further threatened the defacto complainant that if she does not assist to petitioner's request then her photographs will be leaked and uploaded in the Internet and in social media.

5. Therefore, without any option the defacto complainant has gone to the place of the petitioner and had intercourse with him, as a result she got pregnant. The defacto complainant's husband left her by acknowledging that her wife/defacto complainant is pregnant and is carrying someone else child. Thereafter, the defacto complainant gave birth to a child on 21.01.2021. With these averments, when a complaint was lodged against the petitioner herein and his wife the police arrested the petitioner on the same day.

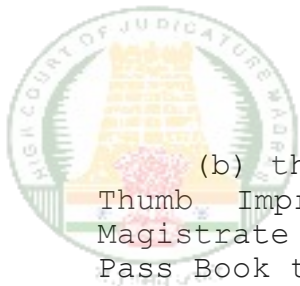
6. This Court asked the learned Additional Public Prosecutor whether any DNA Test conducted in respect of the fraternity of the child. The learned Additional Public Prosecutor states that request for fraternity test was submitted before the Trial Court on 17.02.2022. This Court further has failed to understand why the investigating officer has not taken action to draw the sample immediately and has not sent it for test, even after nearly 3 months from the date of arrest of the petitioner regarding the investigation of the fraternity of the child. Only on 17.02.2022, sample was drawn and submitted to the laboratory.

7. As far as the case is concerned the petitioner was arrested on 18.12.2021 and he is in jail nearly for 80 days. Except the DNA report the investigation is almost completed.

8. The Aadhar Card of the defacto complainant indicates that her date of birth as 10.09.1997. Even in her version, it is admitted that she was subjected to penetrative sexual offence in the year 2016, at that time she would have crossed 18 years. If it is so, the offence under POSCO Act is not applicable.

9. Considering the facts and circumstances of the case and also considering the period of incarceration suffered by the petitioner, 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 District Mahila Court, Thiruvallur.



(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;

WEB COPY (c) the petitioner is directed to appear before the Investigating Officer as and when required for interrogation.

(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/-
10/03/2022

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 DISTRICT MAHILA COURT,
THIRUVALLUR.

2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
W-33, MADHAVARAM, CHENNAI

3 THE SUPERINTENDENT,
CENTRAL JAIL, PUZHAI, CHENNAI.



4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 CC to M/S. K.UDAYASELVI Advocate on payment of necessary
charges SR.NO.3723

CRL OP.5370/2022

Date :10/03/2022

JPA 11/03/2022