



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2022

CORAM:

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

CrI.M.P.No.5029 of 2022

in

CrI.R.C.No.494 of 2022

R.Kumar

... Petitioner

Vs.

1.Gangadevi
2.K.Bhaviya Shree
3.K.Dwarakesh
Respondents 2 and 3 are minors
rep by their mother and natural
guardian 1st respondent

... Respondents

PRAYER: Criminal Miscellaneous Petitions filed under Sections 397(1) of Cr.P.C to enlarge the petitioner on bail pending in M.P.No.726/2019 in M.C.No.542/2018 dated 08.04.2022 on the file of VII Additional Family Court, Chennai.

For Petitioner : Mr.R.Sankarasubbu
for M/s.P.Rajesh

ORDER

This Criminal Miscellaneous Petition has been filed seeking the relief to enlarge this petitioner on bail pending in M.P.No.726/2019 in M.C.No.542/2018 dated 08.04.2022 on the file of VII Additional Family Court, Chennai.

2. The petitioner, R.Kumar is the respondent in M.C.No.542 of 2018 on the file of VII Additional Family Court, Chennai. The first respondent herein is his wife and the second and third respondents are their children. The marriage between the petitioner and the first respondent was solemnized on 11.06.2003 as per the Hindu rites and customs. After the marriage, both the petitioner and the first respondent lead a happy matrimonial life and as a result of which, the

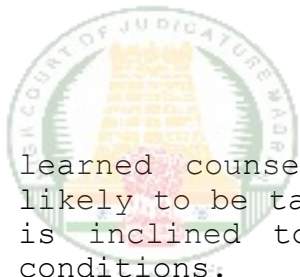


first respondent gave birth to the second and third respondents, now they were aged about 14 and 11 years respectively. After some time, from the date on which, the first respondent gave birth to the second and third respondents, there was some dispute arose between the petitioner and the first respondent and as a result of which, the first respondent left the matrimonial home. Later for herself and on behalf of respondents 2 and 3, she filed a maintenance case in M.C.No.542 of 2018 as against this petitioner, wherein she claimed maintenance for a sum of Rs.10,000/- to each petitioners/respondents herein, totally a sum of Rs.30,000/-. In the said maintenance case, the petitioner herein has not appeared and therefore, by order dated 26.04.2019, the learned VII Additional Principal Judge, Family Court, Chennai passed an ex-parte order, through which the petitioner was directed to pay a sum of Rs.5,000/- to each respondents herein totalling a sum of Rs.15,000/- per month. Even after the same, the petitioner herein neglected to pay the said amount to the respondents and as a result of which, the respondents filed a petition under Section 125(3) Cr.P.C. in M.P.No.726 of 2019, through which, they claimed maintenance amount of Rs.1,20,000/- for the period from 06.12.2018 to 06.08.2019, i.e., Rs.15,000 x 8 months = Rs.1,20,000/-. Later, the learned VII Additional Principal Judge, Family Court, Chennai, by order dated 08.04.2022, sentenced the petitioner to undergo simple imprisonment for a period of one month for the default committed by the petitioner in paying the arrears amount. Challenging the said order, the petitioner is before this Court along with this miscellaneous petition.

3. Heard Mr.Sankarasubbu, learned counsel appearing for the petitioner and perused the materials placed on record.

4. It is the submission made by the learned counsel appearing for the petitioner that the trial Court without taking note of the fact that the petitioner herein has not provided with sufficient opportunity to defend his case in the maintenance case, has passed an ex-parte order, also without seeing the petition filed for setting aside the said ex-parte order passed this impugned order. Moreover, the petitioner is unemployed person and not having any means to pay the entire arrears amount within a short span. He would further submitted that the learned VII Additional Principal Judge without considering the ability of the petitioner, sentenced him to the prison, which is erroneous in law. According to him, now the petitioner is willing to deposit Rs.1,20,000/- to the credit of M.C.No.542 of 2018.

5. Now on considering the said submissions with the relevant records, upon the petition filed by the respondents for claiming maintenance of Rs.1,20,000/-, the order of arrest and subsequent sentence has been passed. Now, the petitioner is willing to deposit the entire amount forthwith. Therefore, considering the facts and circumstances of the case, also considering the submissions of the



learned counsel for the petitioner, further this revision is not likely to be taken up for final hearing in the near future, this Court is inclined to grant bail to the petitioner subject to following conditions.

WEB COPY

(a) The petitioner shall deposit a sum of Rs.1,20,000/- (Rupees One lakh Twenty thousand only) to the credit of M.C.No.542 of 2018 before the trial court i.e. learned VII Additional Principal Judge, Family Court, Chennai forthwith and on such deposit being made, the trial court shall redeposit the said amount in a fixed deposit account in any nationalized bank, so that the amount accrues interest. The disbursal of this amount shall be decided at the culmination of the criminal revision case.

(b) The learned VII Additional Principal Judge, Family Court, Chennai is directed to re-call the warrant immediately after the deposit of Rs.1,20,000/- by the petitioner in the credit of M.C.No.542 of 2018 and pass orders to release the petitioner on bail.

6. With the above directions, this Criminal Miscellaneous Petition is ordered.

-sd/-
13/04/2022

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 VII ADDITIONAL PRINCIPAL
JUDGE, FAMILY COURT, CHENNAI.

2 THE II ADDITIONAL JUDGE,
FAMILY COURT, CHENNAI.



3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL.

+2 C.C. to M/S P.RAJESH Advocate on payment of necessary charges
SR.NO.5654

Order
in
CRL MP.5029/2022
in
CRL RC.494/2022

Date :13/04/2022

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JPA 13/04/2022