



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2022

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.9498 of 2022

Sivasankaran @ Sankar

... Petitioner

Vs.

State Represented by
Inspector of Police,
Thirunallar Police Station,
(Cr.No.108 of 2021)

... Respondent

PRAYER: Criminal Original petition has been filed under Section 439 of Cr.P.C, prayed to enlarge the petitioner on bail pending trial in Spl.C.C.No.14/2021 on the file of the Special Judge under Pocso Act, Karaikal.

For Petitioner : Mr.R.C.Paul Kanagaraaj

For Respondent : Mr.S.Udayakumar
Government Advocate (Crl side)

For Defacto : Mr.J.Jerome
complainant

ORDER

The petitioner who was arrested and remanded to judicial custody on 07.08.2021 for the offences under Sections 8 of Protection of Child from Sexual Offences Act, 2012 in Cr.No.108 of 2021 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the petitioner illegally entered into the house of the defacto complainant and sexually assaulted her minor daughter and threatened her with dire consequences. Hence this complaint.

3. The learned counsel for the petitioner submitted that the petitioner is no way connected with the alleged offence and he has been falsely implicated in this case and the petitioner has been in jail from 07.08.2021. He further submits that only based on the 164 statement, this Court had rejected the previous bail applications. However, it is submitted by the learned counsel that the defacto complainant has filed an affidavit to the effect that she has wrongly given the complaint against the accused and thereby, there is



contradiction between the complaint and the present affidavit and therefore, there is a doubt with regard to the occurrence proper which benefit has to be given to the accused and hence prays for bail.

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4. The learned Government Advocate (Crl.Side) vehemently opposed for grant of bail by submitting that no change of circumstances arises for consideration in this criminal original petition and prays for dismissal of this petition.

5. This Court perused the statement of the victim as well as the defacto complainant and also perused the affidavit filed by the defacto complainant. A perusal of the same reveals that the complaint of the defacto complainant is said to be based on the information given to her by the aunt of the victim, based on which, the complaint has been given. However, the counsel for the defacto complainant has filed the affidavit before this Court, signed by the defacto complainant, in which, the defacto complainant has stated that she had wrongly filed the complaint against the accused. Further the complaint of the defacto complainant and the affidavit is in total variance and therefore, acting on the said complaint by not giving prima facie benefit to the accused would not be in the interest of justice.

6. Considering the above facts and circumstances, this Court is inclined to grant bail to the petitioner. Accordingly, the petitioner is directed to be released on bail subject to the following conditions:

(a) the petitioner, within a period of four weeks after the release, the petitioner shall execute a bond for Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Special Judge under POSCO Act, Karaikal;

(b) the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(e) the petitioner shall appear before the respondent Police at 10.30 a.m. until further orders;

(f) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(g) the petitioner shall not abscond either during investigation or trial;



(h) on breach of any of the aforesaid conditions, the learned 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]; and

(i) if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

-sd/-

26/04/2022

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 SPECIAL JUDGE UNDER
POSCO ACT, KARAIKAL

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUDUCHERRY

3 INSPECTOR OF POLICE,
THIRUNALLAR POLICE STATION,
KARAIKKAL DISTRICT, PUDUCHERRY.

4 THE PUBLIC PROSECUTOR
PUDUCHERRY

CC to M/S R.C.PAUL KANAGARAJ Advocate on payment of necessary charges Sr.6395

CRL OP.9498/2022

Date :26/04/2022

RVR 28/04/2022