



Crl.O.P.No.21575 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2022

CORAM

THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

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Aneef

... Petitioner

Vs.

The State represented by,
The Inspector of Police,
W-23, All Women Police Station,
Royapettah, Chennai.

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleaded to enlarge the petitioner on bail concerned in Crime No.2 of 2022, on
the file of the Inspector of Police, W-23, All Women Police Station,
Royapettah, Chennai, pending investigation.

For Petitioner : Mr.R.Rajan

For Respondent : Mr.C.E.Pratap
Government Advocate (Crl. Side)

ORDER

The petitioner, who was arrested and remanded to judicial custody
on 25.05.2022, for the offences punishable under Sections 9(n) r/w Section



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10, 5(1), (j)(ii)(n) r/w 6 and 17 of POCSO Act, in Crime No.2 of 2022 on the file of the respondent police, seeks bail.

2. The case of the prosecution as per the defacto complainant Mumtaaj is that her younger sister was given in adoption to one Jameela and thereafter, they had not seen her sister. While so, marriage of her first younger brother was fixed on 26.07.2021 and thereby, the defacto complainant had invited the said Jameela and asked her to bring her younger sister for the marriage and they had come for the marriage and at that time, the victim/younger sister of the defacto complainant was introduced to the defacto complainant as her actual sister and that they shared their mobile numbers and after that the victim had called her sister/defacto complainant and informed that two of her step brothers and also the adopted father committed sexual assault on her by inappropriately touching her breast and yet another step brother viz., Imthias had committed penetrative sexual assault on her on 01.01.2021 twice and due to which she had become pregnant and thereafter, the accused had taken her to one Fousiya Hospital at Triplicane and had aborted the pregnancy and they have also threatened the



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victim no to disclose it to anybody and after some days, her sister had informed the same to the defacto complainant. Hence the complaint.

3. Mr.R.Rajan, the learned counsel appearing for the petitioner would submit that the petitioner is an innocent person and a false complaint has been given as against him and his family members. He would also submit that the victim was taken in adoption by the parents of the petitioner when she was 10 days old and the victim was brought up by his parents as his younger sister in their home and only after sometime, she was introduced to her sister/defacto complainant, when she had invited them for a marriage. Subsequently, the defacto complainant coming to know about the financial status of the petitioner, has given a false complaint in order to extract money from the family of the petitioner.

4. He would further submit that the petitioner and her parents have brought up the victim as their own child and that she was also given best education and she was admitted in Ethiraj College for studying B.Sc. Visual Communication course. The victim had developed intimacy with one



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Venkatesan and it was objected to by the petitioner and his family members.

While so, the victim, who had gone to the college on 04.03.2022 did not come back from the college and she was missing. Thereby, the petitioner's mother Jameela had given a complaint to the Egmore Police Station in respect of missing of the victim and a case has been registered in Crime No.95 of 2022 for "Girl Missing". Thereafter, only during the course of investigation, it came to light that she was having love affair with one Venkatesan, who was working as a labourer. Since, the petitioner and his family members were against the relationship, she went along with her sister and only in order to wreak vengeance, a false complaint has been given. Based on that, the petitioner was arrested on 25.05.2022 and the petitioner is in custody for more than four months.

5. He would also submit that without admitting the case of the prosecution, even assuming for a moment and taking into consideration the allegation as against the petitioner, the victim has stated that the petitioner had only inappropriately touched her breast and other than that there is no allegation of any penetrative sexual assault as against the petitioner. He



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would further submit that though the victim has stated that she was taken to one Fousiya Hospital, Triplicane and abortion was committed on her, the respondent police have not till date examined anybody from the hospital, which goes to show that the entire case has been fabricated on the instigation of the victim, who for the reasons best known to her is averse to the petitioner and his family members. He would further state that the father of the petitioner, against whom the allegations are similar, has been granted bail by the learned Sessions Judge in Crl.M.P.No.759 of 2022 dated 19.05.2022. He would also state that the investigation has been completed and the final report has also been filed and it is not taken on file till date. He would also reiterate that the allegations as against the petitioner is that he had inappropriately touched the breast of the victim. He would also submit that the victim girl is a student in a reputed college and the delay in filing the case would go to show that the case has been given against the petitioner and his family members for obvious reasons. Therefore, he prays for grant of bail to the petitioner.



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6. The Government Advocate (Crl.Side) appearing for the respondent police would submit that the victim was given in adoption to the parents of the petitioner when she was few days old and the victim was brought up by the parents of the petitioner and she was put up in Ethiraj College and that while she was in the house of the petitioner, the petitioner as well as his father and his brothers have committed sexual assault on her and one of the brothers Imthias had committed penetrative sexual assault on the victim, due to which, she became pregnant and as per the victim's statement, the pregnancy was aborted at Fousiya Hospital at Triplicane.

7. On instructions from the respondent police, the learned Government Advocate (Crl. Side) would fairly concede that nobody has been examined and no investigation has been done with regard to the alleged abortion done at Fousiya Hospital. He would further submit that the investigation has been completed and the final report has also been filed before the Special Court for Exclusive Trial of Cases under POCSO Act, Chennai and it has not been taken up on file. Hence, he vehemently opposed to grant bail to the petitioner.



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8. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) and perused the materials available on record.

9. It is the case of the prosecution that the victim was given in adoption to the family of the petitioner when she was few days old and the petitioner, his brothers and his father have committed sexual assault on her when she was undergoing college and though the allegations are in respect of the period from 01.01.2020 to 04.02.2021, the complaint has been given only on 04.04.2022 and also a perusal of the 164 of Cr.P.C., statement and other statements shows that the allegation against the petitioner is that he is stated to have touched the breast of the victim girl inappropriately.

10. Taking into consideration the facts and circumstances of the case, the submissions made by the learned counsel and the period of incarceration suffered by the petitioner and there is no allegation of penetrative sexual assault as against the petitioner, this Court is inclined to grant bail to the petitioner with certain conditions.



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11. Accordingly, the petitioner is ordered to be released on bail on his executing 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 Special Court for Exclusive Trial of Cases under POCSO Act, Chennai**, and on further conditions that:

[a] 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;

[b] the petitioner shall report before the Special Court for Exclusive Trial of Cases under POCSO Act, Chennai at 10.30 a.m., on all working days until further orders;

[c] the petitioner shall not abscond either during investigation or trial;

[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 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



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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 abscond, a fresh FIR
can be registered under Section 229A IPC.

28.09.2022

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To

1. The Special Court for Exclusive Trial of Cases under POCSO Act,
Chennai.
2. The Inspector of Police,
W-23, All Women Police Station,
Royapettah, Chennai.
3. The Superintendent,
Central Prison,
Chennai.
4. The Public Prosecutor,
High Court of Madras.



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