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CrI.O.P.No.23528 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2022

CORAM

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

CrI.O.P.No.23528 of 2022

Elambaruthi

... Petitioner

Vs.

State by:-

The Inspector of Police,
Anaikaranchathiram Police Station,
Mayiladuthurai District.

(Crime No.73 of 2022)

.. Respondent

PRAYER: Criminal Original Petitions filed under Section 439 of Cr.P.C.,
pleased to grant bail to the petitioner pending investigation in Crime No.73
of 2022 on the file of the respondent police.

For Petitioner : Mr.J.Jawahar

For Respondent : Mr.C.E.Pratap
Government Advocate (CrI.Side)
: Mr.S.Janarthanan
(Intervener)



Crl.O.P.No.23528 of 2022

WEB COPY

ORDER

The petitioner, who was arrested and remanded to judicial custody on 12.09.2022 for the offences punishable under Sections 366(A) IPC @ 366(A) of IPC and Section 6 r/w 5(1) of POCSO Act in Crime No.73 of 2022 on the file of the respondent police, seeks bail.

2. The case of the prosecution as per the defacto complainant Hajanajiputhin is that the accused kidnapped his minor daughter and thereafter, taken her to Kerala and committed penetrative sexual assault on her, due to which, she become pregnant and later it was aborted. During such time, the petitioner had committed cruelty on the victim and later, had dropped the victim in the house of the defacto complainant. Hence the complaint.

3.The learned counsel appearing for the petitioner would submit that the petitioner is an innocent person and the petitioner and the victim belong to same locality and they are known to each other. The petitioner is a Hindu and the victim is a Muslim and they were having a love affair and when it came to the knowledge of the parents of the victim, it was objected



Crl.O.P.No.23528 of 2022

WEB COPY

and thereby the victim eloped from her house and that the petitioner without understanding the consequences and rigors of the POCSO Act, had taken the victim and they eloped to Kerala and later on coming to know about the registration of the case, they came back. He would further submit that the petitioner was arrested on 04.08.2022 and thereafter, the victim has been subjected to medical examination and statement under Section 164 Cr.P.C has also been recorded. He would further submit that though in the statement recorded by the respondent Police the victim has stated that she has eloped with the petitioner, later on the compulsion of her parents, the victim has stated that the petitioner has caused harassment and cruelty on her. He would further submit that the petitioner is in judicial custody from 04.08.2022 for more than one month and he is prepared to furnish adequate security for his release on bail and to appear before the respondent for investigation. He would also submit that the petitioner also undertakes that he will not interfere with the life of the victim any more. Hence, he prays for grant of anticipatory bail to the petitioner.

4. The Government Advocate (Crl.Side) appearing for the



Crl.O.P.No.23528 of 2022

respondent police would submit that the petitioner had kidnapped the minor daughter of the defacto complainant, taken her to Kerala and committed penetrative sexual assault on her and he had also caused harassment. He would further submit that in the statement recorded by the respondent Police, the victim has stated that she had eloped with the petitioner. Later the statement recorded under Section 164 Cr.P.C., she has alleged that the petitioner had committed cruelty on her. Hence, he opposed for grant of anticipatory bail to the petitioner.

5.The learned counsel for the intervener / defacto complainant would submit that it is a case where the petitioner had kidnapped the minor daughter of the defacto complainant, taken her to Kerala and committed penetrative sexual assault on her. The defacto complainant had filed HCP and only on the intervention of this Court, the respondent Police secured the victim and the accused. Hence, he seriously opposed for grant of anticipatory to the petitioner.

6.Heard the learned counsel for the petitioner and the learned



Crl.O.P.No.23528 of 2022

Government Advocate (Crl.Side) and perused the materials available on record including the 164 statement recorded from the victim girl.

7. Taking into consideration the facts and circumstances of the case and taking note of the 164 statement recorded from the victim girl and the period of incarceration undergone by the petitioner and also considering the age of the petitioner and the victim girl, this Court is inclined to grant bail to the petitioner.

8. 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) each** with **two sureties**, each for a like sum to the satisfaction of the **learned Special Court under POCSO Act, Nagapattinam** 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 stay at Chennai and



Crl.O.P.No.23528 of 2022

report before the Inspector of Police, Mylapore Police Station daily at 10.30 a.m and 5.30 p.m., 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 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.

20.10.2022

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Crl.O.P.No.23528 of 2022

WEB COPY

To

- 1.The Special Court under POSCO Act,
Nagapattinam.
2. The Inspector of Police,
Anaikaranchathiram Police Station,
Mayiladuthurai District.
3. The District Jail,
Nagapattinam.
4. The Public Prosecutor,
High Court of Madras.



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Crl.O.P.No.23528 of 2022

A.D.JAGADISH CHANDIRA.,J.

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Crl.O.P.No.23528 of 2022

20.10.2022