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Crl.O.P.No.23634 of 2022

A.D. JAGADISH CHANDIRA, J.,

The petitioner, who apprehends arrest for the alleged offences under Sections 9, 10 and 11 of the Prohibition of Child Marriage Act, 2006 and Section 5(1) & 5(j)(ii) of POSCO Act 2012 in Crime No.30 of 2022 on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution is that the accused joint together had performed the child marriage between A1 and the victim minor girl and thereafter, A1 had committed penetrative sexual assault on the victim girl, due to which she become pregnant and later aborted the foetus. Hence, the complaint.

3. The learned counsel for the petitioner would submit that the petitioner and the defacto complainant are relatives, the defacto complainant's mother is working as a house maid and her father is suffering from serious health ailments. The petitioner's mother is also terminally ill and the parents of the petitioner as well as the victim being illiterates and coming from lower strata of society, without understanding the consequences and rigours of the POCSO Act performed the marriage between the petitioner and the victim. The petitioner

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also believed that the victim was major at the time of marriage. However, on the complaint given by the hospital authorities, the case has been registered. He would further submit that Section 164 Cr.PC statement has been recorded, wherein she had stated that the marriage was performed with her consent and she is living in the matrimonial house with her husband. Hence, he prays for grant of anticipatory bail to the petitioners.

4. The Government Advocate (Crl.side) would submit that the petitioner's mother and the victim parents performed the child marriage. The petitioner and the victim girl was living as husband and wife, due to which she became pregnant, since, the foetus was not developed properly, the foetus was aborted. He would submit that the investigation is pending and the medical examination on the victim girl has been completed and statement under Section 164 Cr.PC have been recorded from the victim girl. He would submit that the investigation is pending.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.side) and perused the materials available on record and the Statement under Section 164 Cr.PC.

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6. Taking into consideration the facts and circumstances of the case and the submissions made by the learned Government Advocate (Crl.side), this Court is inclined to grant anticipatory bail to the petitioner subject to the following conditions :

7. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen (15) days from the date on which the copy of the order is made ready, before the FTC, Mahila Court, Thiruvallur, on condition that the petitioner shall execute a separate bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties, each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[a] the petitioner and 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 respondent Police daily at 10.30am., until further orders.

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond either during investigation or trial.

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A.D. JAGADISH CHANDIRA. J,
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[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.

With the above directions, this Criminal Original Petition is ordered.

26.10.2022

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