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Crl.O.P.No.28099 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2022

CORAM

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

Crl.O.P.No.28099 of 2022

Chinraj

... Petitioner

Vs.

The State represented by,
The Inspector of Police,
All Women Police Station,
Sooramangalam, Salem District.

(Crime No.27 of 2022).

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleaded to enlarge the petitioner on bail in connection with the Crime No.27
of 2022 pending investigation on the file of the respondent Police.

For Petitioner : Mr.C.Deepak Kumar

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



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ORDER

The petitioner, who was arrested and remanded to judicial custody on 29.08.2022 in Crime No.27 of 2022 registered for the offence under Section 366 IPC @ Section 366 IPC, Section 9 of Prohibition of Child Marriage Act, 2006, & Sections 5(l) r/w 6 of Protection of Children from Sexual Offences Act, 2012, on the file of the respondent Police, seeks bail.

2. On the complaint given by the de-facto complainant that her daughter aged about 17 years was kidnapped by the petitioner/accused, a case in crime No.27 of 2022 has been registered by the respondent Police for for the offence under Section 366 IPC. During the course of investigation, it came to light that the accused had kidnapped the victim girl and married her and also committed penetrative sexual assault on her. Thereby, the case has been altered to the offence punishable under Section 366 IPC and Section 9 of Prohibition of Child Marriage Act, 2006, r/w Section 5(l) & 6 of Protection of Children from Sexual Offences Act, 2012. Hence the case.



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3. The learned counsel appearing for the petitioner submitted that

the petitioner, who is aged about 24 years, is an innocent person and a false complaint has been given as against him. He further submitted that the petitioner and the victim minor girl, aged about 17 years, are known to each other for a long time and there was a love affair between them and when the family members of the victim girl came to know about their affair, had made the marriage arrangements and forced the victim to marry someone, against her choice, thereby, the victim girl by threatening the petitioner that she will commit suicide, forced the petitioner to take her with him, due to which, the petitioner, without understanding the consequences and rigours of the Protection of Children from Sexual Offences Act and Prohibition of Child Marriage Act, had eloped with the minor victim girl and married her in a temple. He also submitted that the petitioner on coming to know about the case registered against him by the de-facto complainant, he along with the victim girl surrendered before the respondent Police. He also stated that the petitioner understands that the statement has been recorded from the victim girl under Section 164 Cr.P.C, wherein, she had admitted that there was a love affair between them and only on her insistence, the petitioner had taken her with him and there is no averment as against the petitioner, as if he had



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committed penetrative sexual assault on her. He further submitted that the petitioner is in custody from 29.08.2022, hence, he prayed for grant of bail to the petitioner.

4. The Government Advocate (Crl.Side) appearing for the respondent police submitted that the petitioner had kidnapped the minor victim girl from the legal guardianship of the de-facto complainant and married her in a temple and committed penetrative sexual assault on her. He further submitted that the minor victim girl has been secured and the statement has also been recorded from the victim girl under 164 Cr.P.C., wherein, she had admitted that there was a love affair between the petitioner and herself and she on her own volition gone along with the petitioner. He also submitted that the petitioner was arrested on 29.08.2022, however, he opposed to grant bail to the petitioner.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the respondent and perused the materials available on record including the statement recorded under 164 Cr.P.C from the victim girl.



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6. Taking into consideration the facts and submissions of the case, taking note of the statement recorded under Section 164 Cr.P.C. from the victim girl that only on her compulsion, the petitioner had taken her along with him and also there is no averment to show that the petitioner has committed sexual assault on the victim and also considering the period of incarceration undergone by the petitioner, this Court is inclined to grant bail to the petitioner.

7. 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 POCSO Act, Salem** 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 respondent Police everyday at 10.30 a.m., until further orders;



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[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.

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To

1. The Special Court for POCSO Act,
Salem.
2. The Inspector of Police,
All Women Police Station,
Sooramangalam, Salem District.
3. The Central Prison,
Salem.
4. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA.,J.

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