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Crl.O.P.No.28343 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2022

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

Crl.O.P.No.28343 of 2022

Periyasamy

... Petitioner

Vs.

State by,
The Inspector of Police,
Thoppur Police Station,
Dharmapuri District.

(Crime No.250 of 2022)

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleased to enlarge the petitioner on bail, in the case pending investigation in
Crime No.250 of 2022 on the file of the respondent Police.

For Petitioner : Mr.R.Thamarai Selvan

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 10.10.2022, for the offences punishable under Sections 448, 376 IPC, in Crime No.250 of 2022, on the file of the respondent police, seeks bail.

2. The case of the prosecution as per the de-facto complainant/victim Pachaiyammal is that on 09.10.2022 at about 6.30 p.m., one Periyasamy/accused, who is the son of her husband's brother, had come to her house and asked her to switch on the T.V, for which, the victim had informed that the television was not working for the past one month. While she was saying so, the accused has closed the door, misbehaved with her by inserting his finger in her external genitalia and raped her. The further allegation is that she had pushed him and bitten his left index finger, at such time, the accused has teared her inner garments and also bitten her upper lip and her breasts. When she raised an alarm, the neighbors had knocked the door, while so, the accused had hidden under the cot and also threatened her with wooden logs. Hence the case.



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3. The learned counsel appearing for the petitioner submitted that the de-facto complainant is none other than the close relative (wife of his father's brother) of the petitioner and there exists a property dispute between them, due to which, a false complaint has been lodged as against the petitioner. He further submitted that on 09.10.2022, there was a scuffle between them on account of the existing dispute, during such time, the de-facto complainant sustained injuries on her upper lip and on other parts of the body and on taking advantage of the same, an exaggerated complaint was given as against the petitioner, as if he had trespassed into her house and attempted to rape her in a violent manner. He also submitted that perusal of the medical report would show that the complaint of the petitioner is an exaggerated one and the medical evidence does not disclose that there was forcible or violent rape on her and also there was no injury on her external genitalia. He also stated that the occurrence as stated by the de-facto complainant had not happened in such a manner.

4. Learned counsel also submitted that the petitioner is married man and he has two children and his house is next to the house of the de-facto complainant and the family members of the petitioner were also



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available during the relevant time. He also stated that it is clear that the case is a false case lodged only in order to take revenge on the petitioner and he was arrested on 10.10.2022 and he is in custody for more than a month. Hence, he prayed to grant bail to the petitioner.

5. The respondent has filed a detailed counter.

6. The Government Advocate (Crl.Side) appearing for the respondent police submitted that the petitioner is the close relative of the de-facto complainant. He also submitted that as per the complaint, the petitioner had entered into the house of the de-facto complainant, misbehaved with her and raped her and bitten her lips and breasts. Hence, he vehemently opposed to grant bail to the petitioner.

7. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) and perused the materials available on record including the Medical Report and the CD file.



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8. Taking into consideration the facts and circumstances of the case and the submissions made by the learned counsel and considering the period of incarceration undergone by the petitioner and on perusing the CD file and the AR copy, this Court is inclined to grant bail to the petitioner with certain conditions.

9. 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 Judicial Magistrate-II, Dharmapuri**, 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 Tenkasi and report before the Inspector of Police, Tenkasi Town Police Station, everyday at 10.30 a.m., and 05.30p.m., until further orders;

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



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[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.

24.11.2022

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To

1. The Judicial Magistrate No.II,
Dharmapuri.
2. The Inspector of Police,
Thoppur Police Station,
Dharmapuri District.
3. The Central Prison, Salem.
4. The Inspector of Police,
Tenkasi Town Police Station,
Tenkasi.
5. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA.,J.

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