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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 22/02/2022

PRONOUNCED ON: 25/02/2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.3603 of 2022

Mohankumar

... Petitioner/Sole Accused

Vs

State rep.by
The Inspector of Police,
All Women Police Station,
Karaikudi,
Sivagangai District.
(Crime No.4 of 2022).

... Respondent/Complainant

For Petitioner : M/s.A.Ramesh, Senior Counsel for
M/s.Venkatachalam.D, Advocate.

For Respondent : M/s.E.Antony Sahaya Prabhar,
Additional Public Prosecutor

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :-

For Bail in Crime No.4 of 2022 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner/Sole accused, who was arrested and remanded to judicial custody on 06.02.2022 for the offences punishable under Sections 7, 8, 11(iii) and 12 of the Protection of Children from Sexual Offences Act, 2012, in Crime NO.4 of 2022 on the file of the respondent police, seeks bail.



2. The case of the prosecution is that the defacto complainant is studying her first year B.Tech in College, in Dindigul and she is having a sister and brother, that her father worked in Singapore for the past 24 years and five months ago, he came to the house at Karaikudi and stays with the family at Karaikudi, that her mother had been running a textile showroom nearby their house, that the petitioner who runs hospital adjacent to her house, is their family doctor, that while her father was in Singapore, the petitioner used to come her house to treat her mother and thereafter he used to stay with her mother till midnight 2 O'clock, that she had studied her 11th and 12th standard at Pudukottai, that sometimes the petitioner, who had close relationship with her mother, took her from the school and that one day, in the last week of January 2020, the petitioner took her in his car from the school and while returning the petitioner parked his car at the side of the road and tried to molest her by showing a video wherein her mother was with him at close quarters, that since she refused to see the video and opposed it, the petitioner hit on her shoulder and dropped her at her house, that during the pandemic period, she used to attend her classes from home by virtual mode, that at that time, the petitioner sitting beside her showed some porn videos from You Tube and while showing the same, he would say that this will be in her biology subject, that thereafter one day in the beginning of December 2020 at about 11.00p.m., while she was sleeping with her sister and brother in her bedroom, she felt like someone was touching her shoulder and breast, that when she woke up, she saw the petitioner sitting next to her and putting his hand on her breast, that she had shouted at him and informed that she would tell her mother, that the petitioner informed her with her that her mother has been administered injection and she was asleep and that if the defato complainant makes any complaint, he will administer other injuncion on her mother.

3. The case of the petitioner is that the house of the defacto complainant and the hospital of the petitioner are adjacent to each other, that the petitioner is the family Doctor of the defacto complainant's family, that the petitioner used to visit the house of the defacto complainant to treat her mother and her mother was friendly with the petitioner, that the defacto complainant who did not like her mother's friendly relationship with the petitioner, raised objections and also informed her father, that thereafter there were continuous altercations between the petitioner's mother and father over phone, that the defacto complainant and her father who could not find a way to end the relationship between the petitioner the defacto complainant's mother, have lodged the present complaint falsely implicating the petitioner and that the petitioner is innocent and he has nothing to do with the alleged occurrences.

4. Heard the learned Counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State and perused the materials placed on record.



5. The learned Counsel for the petitioner would submit that the petitioner is having very good reputation in his profession and earned name among the people of that area and that his reputation has been tarnished.

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6. Admittedly the petitioner is running a hospital adjacent to the house of the defacto complainant and it is also not in dispute that the petitioner is their family Doctor and that he used to visit their house often. The petitioner, in his petition itself, has specifically admitted that there existed some relationship between the petitioner and the defacto complainant's mother. The defacto complainant as well as her father have taken a stand openly that the petitioner had extra marital affairs with the defacto complainant's mother. The main contention of the petitioner is that the defacto complainant's father, who wanted to stop the relationship between the petitioner and his wife, had set up his own daughter and filed the above false complaint.

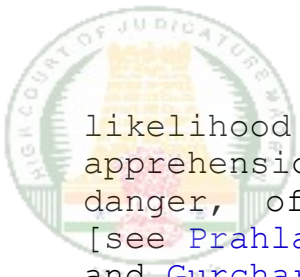
7. The learned Counsel for the petitioner has relied on a judgment of the High Court of Delhi, in **Luv Sharma and Others Vs the State and Another** made in **Crl.M.C.No.1603 of 2021, dated 19.01.2022**, wherein while considering the petition filed under Section 482 Cr.P.C., to quash the F.I.R., registered for the offences under Sections 376, 377, 354, 506, 509 and 34 I.P.C., on the ground that the matter was amicably settled between the parties, the learned Judge has observed that the Court was pained to note that in matrimonial cases, there is an increasing tendency of filing such complaints for an offence under Section 376 I.P.C., against the father-in-law, brother-in-law or any other male member of the family of the husband just to exert pressure on the family of the husband. The learned Judge has further observed "Even though there was an allegation of rape against the father-in-law of the complainant, this Court is of the opinion that no useful purpose would be served in continuing with the present proceedings".

8. The learned Counsel for the petitioner has cited a decision of the Honourable Supreme Court in **P.Chidambaram Vs. Central Bureau of Investigation** reported in **(2020)13 Supreme Court Cases 337** and specifically quoted paragraph No.25 wherein a passage from another judgment of the Honourable Supreme Court is quoted and the same is extracted hereunder:

"Para 25:

After referring para (11) of Kalyan Chandra Sarkar, in State of U.P. v. Amarmani Tripathi (2005) 8 SCC 21, it was held as under:-

"18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi)



likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see *Prahlad Singh Bhati v. NCT, Delhi* (2001) 4 SCC 280 and *Gurcharan Singh v. State (Delhi Admn.)* (1978) 1 SCC 118]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused.....".

No doubt, the Hon'ble Supreme Court has formulated the principles to be considered while considering the bail applications.

9. The learned Counsel for the petitioner has then relied on a decision of the High Court of Karnataka in ***Rakesh Vs State of Karnataka*** reported in ***2020 SCC Online Kar 884***, wherein the case was registered for the offences under Sections 376, 420 and 506 I.P.C., and Section 66-B of the Information Technology Act, 2000 and the learned Judge by citing some of the circumstances which improbably the case of the defacto complainant, has granted anticipatory bail.

10. In the said order, the learned Judge has pointed out that there was a letter allegedly written by the complainant to the effect that she was ready to withdraw the complaint if a compromise is brought about, especially when the complainant had employed the services of the petitioner since last two years.

11. The learned Counsel for the petitioner has produced a copy of the order passed by the High Court of Kerala in ***C.C.Jhonson Vs. State of Kerala in Bail Appeal No.3983 of 2021***, dismissing the bail application along with the copy of the order of the Hon'ble Supreme Court reversing the said order and thereby granted pre-arrest bail.

12. In that case, a Pastor and a trustee of a church was charged with the offences under Sections 451, 376 and 506(i) I.P.C. The Hon'ble Apex Court, taking note of the fact that the alleged incident was occurred on 09.07.2016, that the defacto complainant got married on 31.08.2018 and the complaint was lodged on 26.03.2021, and also the other facts and circumstances, has granted anticipatory bail.

13. But in the present case, the F.I.R., came to be registered, invoking the provisions of POCSO Act and this Court is in agreement with submissions made by the learned Additional Public Prosecutor that the offences under the POCSO Act are being seriously viewed by the Hon'ble Supreme Court and also the Society as a whole, due to the frequency in our Society.



14. In the case on hand, the offence alleged against the petitioner is unpleasant and as rightly pointed out by the learned Additional Public Prosecutor, such misconduct is not expected from a member of a noble profession and that too, being the family Doctor of the victim's family.

15. No doubt, there is some delay in lodging the complaint, but according to the prosecution, in the statement recorded under Section 164 Cr.P.C., the defacto complainant has explained the reasons.

16. As rightly pointed out by the learned Additional Public Prosecutor, the defacto complainant has specifically stated that after the alleged incidents, she had immediately informed her mother, but she had simply directed the victim to follow what the petitioner had said.

17. Even assuming that there is delay on the part of the defacto complainant, it is settled law that the delay in lodging the F.I.R., by itself is not a ground to doubt the prosecution and moreover, considering the nature of the charges alleged, the delay in preferring the complaint for POCSO offences cannot be considered as fatal and a valid reason for enlarging the petitioner on bail.

18. It is evident from the statement recorded under Section 164 Cr.P.C., the victim girl has specifically narrated the incidents, in which the petitioner had allegedly misbehaved with her.

19. Considering the seriousness and gravity of the offences alleged and also the fact that the petitioner is in judicial custody only from 06.02.2022 and that the investigation is in earlier stage as stated by the learned Additional Public Prosecutor, this Court is not inclined to grant bail to the petitioner at this point of time.

20. In the result, the Criminal Original Petition is dismissed.

Sd/-

25/02/2022

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Sub-Assistant Registrar (C.S.IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



TO

1. THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
KARAIKUDI,
SIVAGANGAI DISTRICT.
2. THE SUPERINTENDENT, SUB JAIL,
SIVAGANGAI.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. CC to M/S. VENKATACHALAM.D Advocate SR.No.1613

ORDER
IN
CRL OP (MD) No.3603 of 2022
Date :25/02/2022

SP/SBN/SAR IV/03/03/2022/6P/5C