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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

RESERVED ON : 30/03/2022

PRONOUNCED ON: 04/04/2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.5912 of 2022

Vimalbose,

... Petitioner/Sole Accused

Vs

THE STATE REP BY,
The Inspector of Police,
All Women Police Station,
Palayamkottai,
Tirunelveli.
(Cr.No.6/2022).

... Respondent/Complainant

For Petitioner : Mr.D.Shanmugaraja Sethupathi,Advocate
for Mr.M.Murali,Advocate

For Respondent : Mr.E.Antony Sahaya Prabhar,
Additional Public Prosecutor

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

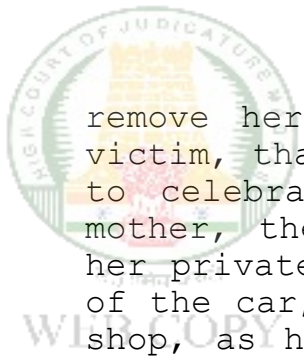
PRAYER :-

For Bail in Crime No.6 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 23.02.2022 for the offences punishable under Sections 9(m), 10, 11(1), 11(3) and 12 of the Protection of Children from Sexual Offences Act, 2012 and Section 506(ii)I.P.C., in Crime NO.6 of 2022 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the defacto complainant is studying 7th std., in a private school, that the petitioner is the friend of her father and after the demise of her father, the petitioner extended help to the family of the defacto complainant, that the petitioner used to talk with victim over phone and has given gifts to her, that the petitioner has also used to kiss the defacto complainant sometimes, that in the month of July 2020, when the victim was taken to the Arasan Bakery by the petitioner in his car, he has touched her breast inappropriately, that he has also taken a picture of the victim in his mobile and insisted the victim to



remove her dress, but the same was resisted and thwarted by the victim, that on 27.09.2021, when the victim went to Rajeshwari Nagar to celebrate birthday of her pet dog, in a car belongs to her mother, the petitioner came there and kissed her and also touched her private part, that she immediately pushed his hand and came out of the car, that on 04.12.2021, when the victim was in her mother's shop, as her mother was not well and at about 09.45p.m., when she was closing the shop, the petitioner came and pinched on her cheek and also placed his hands on her chest, that the victim was put to mental torture and that she was not in a position to concentrate on her studies, that the petitioner had threatened that in case if she discloses the above incidents, he would kill her mother, that on 21.02.2022, when the victim girl and her brother were proceeding in their mother's car, the petitioner had followed their car and came in such a way to dash against their car and that thereafter, while she was attending online class, had contacted the Child Help line Number and gave her complaint.

3. The petitioner's case is that the complaint was lodged at the instigation of the mother of the victim with *malafide* intention to wreak vengeance against the petitioner, that the mother of the victim and the petitioner were known to each other for quite long time through her husband, who was the close friend of the petitioner, that after the demise of the victim's father, the petitioner and the victim's mother have been maintaining close relationship, that subsequently there arose dispute between them, and as a result, the victim's mother has lodged a false and motivated complaint with Palayamkottai Police Station and the case was registered in Cr.No.873/2021, for the offences under Sections 294(b), 352, 354 and 506(ii) I.P.C., r/w Section 4 of Tamil Nadu Prohibition of Harassment of Women Act 2002, that the petitioner was arrested on 12.12.2021, that when the petitioner has moved for bail before the Magistrate Court, the victim's mother has filed an intervening petition opposing for grant of bail, that inspite of their intervention, the petitioner was released on bail, that thereafter at the influence of the victim's mother, charge sheet was hurriedly filed on 27.12.2021, that the victim's mother has filed a petition for cancellation of bail on the ground that the petitioner was trying to intimidate her children and the said petition was also dismissed on 03.03.2022 and that the mother of the victim having failed in her attempt, with intention to keep the petitioner in prison for longer period, has lodged the present complaint.

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 for the occurrence alleged to have taken place on 11.12.2021 in the house of the victim, her mother lodged the complaint and F.I.R. in



complaint was alleged to have witnessed the said occurrence and her statement was already recorded by the police and that if sexual assault by the petitioner was really happened, the victim would have disclosed the same atleast on 11.12.2021, while the police recorded her statement.

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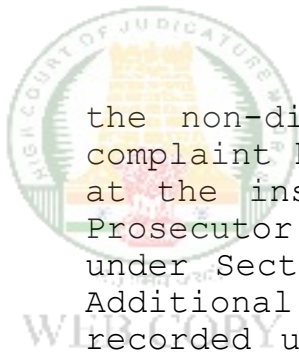
6. The learned Counsel for the petitioner would further submit that the petitioner was arrested on 23.02.2022 and is in judicial custody till now, that the petitioner was also subjected to medical examination, that the respondent police has not sought for police custody so far and that therefore, further incarceration of the petitioner is not at all required. He would further submit that the respondent police has not taken any steps to record the statement of the victim before the Judicial Magistrate under Section 164 Cr.P.C., and that the respondent may be reluctant to produce the victim before the Magistrate because of the apprehension that the falsity and *malafidness* of the complaint at the instigation of the victim's mother would be exposed.

7. But the learned Additional Public Prosecutor appearing for the State would submit that as per the requisition made by the respondent police, the Special Magistrate of Land Grabbing Court holding Full Additional Charge of Court of Judicial Magistrate No.I, Tirunelveli has already recorded the statement of the victim under Section 164 Cr.P.C., on 01.03.2022 itself and that the above contention of the petitioner is absolutely devoid of substance and the same is liable for instant rejection.

8. It is not in dispute that even according to the defacto complainant, the petitioner is the close friend of the victim's father and after the demise of her father, the petitioner has been regularly visiting their home and he extended various helps and has been maintaining relationship with the victim's family like a relative. The petitioner also in his petition has specifically stated that he was the close friend of the victim's father and he was having close relationship with the victim's mother, after the demise of the victim's father.

9. As already pointed out, it is the main contention of the petitioner that at the instance of the victim's mother, earlier F.I.R. came to be registered for the offences under Sections 294(b), 352, 354 and 506(ii) I.P.C., r/w Section 4 of Tamil Nadu Prohibition of Harassment of Women Act 2002 and a statement was taken by the police from the victim alleging that she has witnessed the said occurrence, but the victim has not at all disclosed any of the incidents now alleged by her before the police.

10. As rightly contended by the learned Additional Public Prosecutor, earlier complaint was admittedly lodged by the victim's mother with respect to the commission of offence alleged to have been committed by the petitioner against the victim's mother and as such,



the non-disclosing of the incidents now referred in the present complaint by the victim girl cannot be construed as if the same was at the instigation of her mother. The learned Additional Public Prosecutor has also produced the copy of the statement recorded under Section 164 Cr.P.C., and as rightly contended by the learned Additional Public Prosecutor, the victim girl in her statement recorded under Section 164 Cr.P.C. has specifically narrated the incidents in which the petitioner had allegedly misbehaved with her.

11. This Court is in agreement with the submission of the learned Additional Public Prosecutor that the offences under 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. In the present case, the offences alleged against the petitioner are unpleasant and as rightly pointed out by the learned Additional Public Prosecutor, such misconduct is not expected from a person, who was maintaining a relationship with the family of his friend, who had died some years back.

12. No doubt, the learned Counsel for the petitioner would submit that though the three incidents referred by the victim girl were allegedly occurred in the month of July 2020, 27.09.2021 and 04.02.2022, the complaint was laid on 23.02.2022 and that there was no reason or explanation for the inordinate delay either from the victim or from the respondent police. The defacto complainant in her complaint has specifically alleged that since the petitioner was threatening that he would kill her mother, if she discloses the incident, she was not in a position to inform about the incidents to her mother or others. Even assuming for argument sake, that there is delay on the part of the defacto complainant, it is settled law that the delay in lodging the complaint by itself is not a ground to doubt the prosecution and moreover, considering nature of the charges alleged, the delay in preferring the complaint under the POSCO Act cannot be considered as fatal and valid reason for enlarging the petitioner on bail.

13. Considering the seriousness and gravity of the offences alleged and also the fact that the petitioner is in judicial custody only from 23.02.2022 and that the investigation is pending as stated by the learned Additional Public Prosecutor, this Court is not inclined to grant bail to the petitioner at this point of time.

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

sd/-

04/04/2022

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Sub-Assistant Registrar (C.S.)
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,
PALAYAMKOTTAI,
TIRUNELVELI.
- 2 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADRURAI.

+1. CC to M/S.MURALI M Advocate SR.No.2963(I)

ORDER
IN
CRL OP(MD) No.5912 of 2022
Date :04/04/2022

PKP/PN/SAR-1/08.04.2022/5P/5C