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CRL.O.P.(MD).N



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Reserved on : 25.11.2022
Delivered on : 07.12.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL.O.P. (MD) .Nos.7742 and 12763 of 2022

CRL.O.P. (MD) .No.7742 of 2022 :

S.Manikandan

... Petitioner/Accused

Vs.

State rep.by
The Inspector of Police,
Maraneri Police Station,
Virduhunagar District.
Crime No.34 of 2022.

... Respondent/Complainant

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

PRAYER :- To release the Petitioner on bail,in connection with
Crime No.34 of 2022 on the file of the Respondent Police.

For petitioner : Mr.P.VENKATESAN, Advocate

For Respondent : Mr.P.KOTTAI CHAMY,
Government Advocate (Criminal Side)

CRL.O.P. (MD) .No.12763 of 2022:

State rep.by
The Inspector of Police,
Maraneri Police Station,
Virduhunagar District.
Crime No.34 of 2022.

... Petitioner/Respondent

Vs.

S.Manikandan

... Respondent/Accused

PRAYER : Criminal Original Petition filed under Section 439(2) of
Cr.P.C, seeking orders to cancel the bail order granted to the
respondent/accused by the Special Court for Exclusive Trial of Cases
under POCSO Act, 2012, Virudhunagar District at Srivilliputhur, in
Cr.M.P.No.548 of 2022, dated 27.05.2022.

<https://www.mhc.tn.gov.in/judis>



For petitioner : Mr.P.KOTTAI CHAMY,
Government Advocate (Criminal Side)
For Respondent: Mr.P.VENKATESAN, Advocate

ORDER : The Court made the following common order :-

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The petitioner/Accused in CRL.O.P.(MD).No.7742 of 2022, who was arrested and remanded to judicial custody on 12.02.2022, for the offences punishable under Sections 366, 376(3) IPC and Section 9 of Child Marriage Restraint Act 2006 and Section 5(1) r/w 6 of POCSO Act, 2012, in Crime No.34 of 2022 on the file of the respondent police, seeks bail.

2.The Criminal Original Petition in CRL.O.P.(MD).No.12763 of 2022, has been filed under Section 439(2) of Cr.P.C, seeking orders to cancel the bail order granted to the respondent/accused by the Special Court for Exclusive Trial of Cases under POCSO Act, 2012 in Cr.M.P.No.548 of 2022, dated 27.05.2022.

3. It is not in dispute that on the basis of the complaint lodged by one Ramalakshmi, FIR came to be registered in Crime No.34 of 2022, as "girl missing" on the file of the Maraneri Police Station; that during investigation, the girl was rescued and on the basis of the statement given by the victim girl, the case was altered into 366, 376 (3) IPC and Section 9 of Prohibition of Child Marriage Act and under Section 5(1) r/w 6 of POCSO Act and alteration report was sent to the concerned Court and that subsequently, the accused Manikandan was arrested on 12.02.2022 and was remanded to judicial custody.

4.It is further evident that the accused has filed a bail petition before the Special Court in Cr.M.P.No.143 of 2022 and the same was dismissed vide order dated 03.03.2022; that the accused has then filed an application for bail before this Court in Crl.O.P.(MD) No.4598 of 2022 and the same was dismissed as withdrawn vide order, dated 16.03.2022; that again he has filed another bail petition in Crl.O.P.(MD)No.6026 of 2022 and the same was also dismissed as withdrawn, vide order dated 31.03.2022 and that the accused has filed another bail petition in Crl.O.P(MD)No.7742 of 2022 before this Court and the same is pending.

5.It is evident from the records that meanwhile another bail petition was filed in Crl.M.P.No.548 of 2022 on 24.05.2022 and he was granted bail by the Special Court vide order dated 27.05.2022.

6.When the petition in Crl.O.P.(MD)No.7742 of 2022, was taken up for hearing on 21.06.2022, the learned Additional Public Prosecutor submitted that the accused has moved an application before the Special Court and obtained bail in Cr.M.P.No.548 of 2022 on 27.05.2022 by suppressing the dismissal of the earlier application and also the pendency of the present application.



7. In pursuance of the directions of this Court, the accused has appeared in person and stated that Mr.M.Kartheeswaran Advocate has filed the application for bail before the Special Court.

8. In view of the above representation, this Court directed the Registry to issue notice to Mr.M.Kartheeswaran to appear before this Court. Subsequently, in pursuance of the directions of this Court Mr.M.Kartheeswaran, learned counsel appearing for the accused before the trial Court, was present along with his counsel Mr.S.Mahendrapathy and he sought time to file affidavit. The appearance of Mr.Kartheeswaran, before this Court was ordered to be dispensed with.

9. Mr.Kartheeswaran, filed an affidavit stating that the earlier dismissal of bail petitions by the High Court were not informed to him and that he has not willfully filed the bail application before the trial Court by suppressing the bail application pending before this Court and that there is no fault on his part and that he is tendering unconditional apology. On the same day, the accused has also filed an undertaking affidavit that the above mistake was happened only due to his father's illiteracy and there existed communication error and that he is tendering his unconditional apology.

10. The Inspector of Police filed an affidavit in support of the above petition for cancellation of bail, wherein, it has been stated that the accused has filed the bail petition in Cr.M.P. No.548 of 2022, on 24.05.2022 before the Special Court, suppressing the dismissal of the earlier bail petitions and the pendency of another bail petition before the High Court; that the accused did not approach the Court with clean hands and suppressed the dismissal of the bail petition twice by this Court and that therefore, the bail granted to the accused in Cr.M.P.No.548 of 2022, dated 27.05.2022 by the Special Court for Exclusive Trial of Cases under POCSO Act, 2012, Virudhunagar, is liable to be cancelled.

11. The accused has filed a counter affidavit stated that since the High Court did not grant bail to him, his father Sundararaj has received the case bundle along with change of vakalat from the earlier counsel on 20.06.2022; that his father is an illiterate and he has no knowledge about the Court proceedings; that his father had approached the Advocate Mr.Kartheeswaran and the said Advocate had filed the bail petition before the Special Court and the same was ordered; that the mistake was happened only due to his father's illiteracy and there existed communication error; that himself and his father are innocents and that his family is in poor financial condition.

12. As already pointed out, on behalf of the accused, two bail petitions were filed in Crl.O.P. (MD) Nos.4598 and 6026 of 2022 came to be filed



before this Court and the same were ordered to be dismissed and
awn.

13.It is also not in dispute that subsequently, the accused has filed another bail application in Crl.O.P(MD)No.7742 of 2022 on 20.04.2022 and the same is pending till now. This Court has directed the Registry to call for the records in Cr.M.P.No.548 of 2022 on the file of the Special Court and the copies of the records were received.

14.It is evident from the said records that the bail petition was filed before the Special Court on 23.05.2022, wherein it has been specifically stated in Paragraph No.11, that already the same bail was dismissed by this Court in Crl.M.P.No.143 of 2022, dated 03.03.2022 and this is the second bail application filed before this Court and no similar petition is pending in any other Court of law.

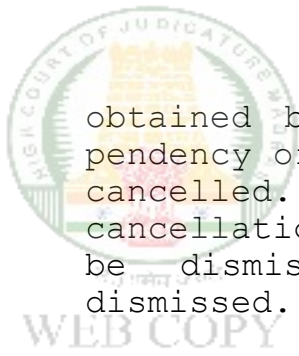
15.It is pertinent to note that they have nowhere whispered about the filing of three bail applications before the High Court and the dismissal of two applications and the pendency of one application at that time.

16.As already pointed out, though the accused has admitted the suppression of filing of three applications filed before the High Court, he has attempted to give an explanation that he was not aware of the filing of petitions and that his father alone had received the case bundle along with change of vakalat from the earlier counsel and handed over to Mr.Kartheeswaran, who in turn filed the same before the Special Court and obtained bail.

17.According to the accused, his father is an illiterate person and he is not having any knowledge about the proceedings and that he is tendering unconditional apology. As rightly contended by the learned Government Advocate (Criminal Side), the accused has been charged with serious offences of 366 and 376(3) of IPC and Section 9 of Prohibition of Child Marriage Act and under Section 5(1) r/w 6 of POCSO Act.

18.Moreover, after completing the investigation, charge sheet has already been laid against the accused for the alleged offences under Sections 366, 376(3) IPC and Section 9 of Prohibition of Child Marriage Act and under Section 5(1) r/w 6 of POCSO Act, 2012.

19.Considering the above, this Court has no hesitation to hold that the conduct of the accused is condemnable and this court cannot approve the conduct of the accused in not disclosing the fact of earlier bail applications filed before this Court. It is pertinent to note that third bail application filed by the accused was very much pending before this Court, when the bail application was moved before the Special Court. Such suppression of material fact cannot be condoned. Hence, this Court concludes that the bail order



obtained by suppressing the dismissal of two bail petitions and pendency of one bail petition before the High Court, is liable to be cancelled. Since this Court has decided to allow the petition for cancellation of bail, consequently, the bail petition is liable to be dismissed. Accordingly, CRL.O.P.(MD).No.7742 of 2022, is dismissed.

20. In the result, CRL.O.P.(MD).No.12763 of 2022 is allowed and the impugned order granting bail by the Special Court for Exclusive Trial of Cases under POCSO Act, 2012, Virudhunagar in Cr.M.P.No.548 of 2022, dated 27.05.2022, is set aside. The petitioner/accused in CRL.O.P.(MD).No.7742 of 2022, is directed to surrender before the concerned Court within three days from today, failing which, the respondent Police is directed to secure him. It is made clear that none of the observations made herein shall have a bearing in the main trial.

sd/-

07/12/2022

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07/12/2022

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

TO

- 1 THE JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES UNDER POCSO ACT 2012.
VIRUDHUNAGAR DISTRICT.
- 2 THE OFFICER INCHARGE, SUB JAIL, VIRUDHUNAGAR.
- 3 THE INSPECTOR OF POLICE
MARANERI POLICE STATION, VIRUDHUNAGAR DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO:

THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. CC to M/S.VENKATESAN.P Advocate SR.No.14525

ORDER IN

CRL.O.P.(MD).Nos.7742 and
12763 of 2022
Date : 07/12/2022

das

SA/SSS/SAR. /08.12.2022/5P/7C