



Crl.O.P.(MD)No.14431 of 2022

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

Date : 24.08.2022

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

Crl.O.P. (MD) No.14431 of 2022

Thangapandiyan
S/o.Kasi Nadar,
No.96A, Ganeshapuram Main Road,
Nagercoil,
Agastheeswaram Taluk,
Kanniyakumari District.

...Petitioner/A2

Vs

State through
The Inspector of Police,
CBCID Nagercoil,
Kanniyakumari District.

... Respondent

For Petitioner : Mr.K.Jeyamohan
Advocate.

For Respondent : Mr.T.Senthilkumar,
Additional Public Prosecutor

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

PRAYER :-

For bail in Crime No.8 of 2020 on the file of
the Respondent police.

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ORDER : The Court made the following order :-

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The petitioner/A2, who was arrested on 30.06.2020, in connection with the case in Crime No.8 of 2020, on the file of the respondent Police, for the offence punishable under Sections 376, 354A, 354B, 354C, 354D, 294(b) IPC and Section 66B of Information Technology Act, seeks bail.

2. Now, the case was taken cognizance in S.C.No.41 of 2021 and the same is pending before the learned Sessions Judge (Mahila Court), Nagercoil.

3. The case of the prosecution is that one Gomathy of Nagercoil lodged a complaint that she is a graduate residing along with her parents in Nagercoil and working in a private organization. From 26.08.2019, she had acquaintance with one Kasi/A1, who is none other than the son of the petitioner. The said Gomathy got introduced to the said Kasi/A1 through Social Media and they were contacting each other through mobile phone. In the meanwhile, the said Kasi/A1 proposed his love towards Gomathy and



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expressed his willingness to meet her. Thereafter, on believing the words of Kasi/A1, she went along with him in his Car, bearing Reg.No.TN-74-AT-5518. The said Kasi/A1 took her to a poultry farm at Therikkalpudur. Thereafter, the said Kasi/A1 locked the doors of the Car and sexually assaulted and raped her despite her objections and also videographed the entire incident without her knowledge. Subsequently, the said Kasi/A1 threatened her with the said Videograph and demanded to obey his other demands. During the course of investigation, it revealed that the petitioner, who is the father of A1, has concealed his son Kasi's Laptop and mobile phone and tampered with electronic gadgets in order to safeguard his son 1st accused in this case. Therefore, the petitioner has been arrayed as an accused No.2 in this case.

4. The learned counsel appearing for the petitioner submits that the petitioner is a senior citizen, running a poultry farm and he is not having any bad antecedent till the cases were registered



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against his son. With certain allegations against his son Kasi/A1 in this case, the respondent Police has implicated this petitioner also as an accused No. 2, as if, he concealed A1/Kasi's laptop in his poultry farm and he was arrested on 30.06.2020 and languishing in jail for more than 25 months. He further submits that in this case, final report was filed and charges were also framed on 08.06.2022. Subsequently, the trial has also commenced and the defacto complainant and other alleged victims have been examined.

5. The learned counsel for the petitioner further submits that as per the final report filed by the respondent Police, the role played by the petitioner is that after knowing about the incident, the petitioner, in order to protect his son, took all the electronic gadgets of his son/Kasi and hid them in a rice bag and attempted to conceal the evidence. Even assuming that the entire allegation is true, the only offence attracted against the petitioner is Section 201 IPC, which deals about the punishment for



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concealing the evidence. Even as per the said provision, the maximum punishment is only for a period of three years. Now, the petitioner is in judicial custody for more than 25 months.

6. The learned counsel for the petitioner further submits that the petitioner is a disabled person with 50% disability suffering with knee cap displacement in both the legs. The petitioner is also a diabetic patient with various other health ailments. The petitioner is also injecting insulin around three times a day. Therefore, the petitioner may be enlarged on bail, considering his health ailments and also considering the period of incarceration undergone by him for more than 25 months.

7. The learned Additional Public Prosecutor submits that this is the sixth bail application filed by the petitioner before this Court. Considering the gravity of offence, the earlier bail applications filed by the petitioner were dismissed by this Court



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and there is no change in circumstances in this case to enlarge the petitioner on bail. The petitioner/A2 has filed various applications before the trial Court as well as before this Court in order to drag on the proceedings and he also attempted to intimidate the witnesses, since the main accused/A1 is his son.

8. The learned Additional Public Prosecutor further submits that the allegation levelled against the petitioner/A2 is that after the arrest of his son A1-Kasi, he intentionally screened the offence by hiding his son Kasi's Apple Laptop, Apple Cell Phone and his accessories in the backside of poultry farm near sump at Theraykalpudhur, near Thiravium Hospital to destroy the evidence. On 26.04.2020, the Apple Laptop, Apple Cell Phone and all gadgets were recovered and sent to Tamil Nadu Forensic Science Laboratory, Chennai, for analysis. He further submits that the analysis report reveals that the first accused had exploited the life of more than 120 innocent women and had also taken more than 1900 obscene full and half nude photos and 400 videos



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also. Since the petitioner herein, who is the father of the first accused, had screened all the electronic gadgets of his son Kasi/A1, he was arrayed as accused No.2 and arrested and remanded into judicial custody.

9. The learned Additional Public Prosecutor further submits that even in the judicial custody, the accused Nos.1 and 2, through their friends, threatened Dravid, who is the defacto complainant in Crime No.4 of 2020, on 28.08.2020 and in this connection, a case was also registered in Crime No. 882 of 2020 for the offences under Sections 341, 506(i) and 195(A) IPC. Similar such occurrence also took place on 15.12.2020 and based on the complaint given by the defacto complainant Dravid, another case was also registered on the file of the Vadasery Police Station in Crime No. 646 of 2020 for the offences punishable under Sections 147, 294(b), 406, 365, 468, 323 and 506(i) IPC. Apart from that, the petitioner is also involved in the following cases:

(i) Nagercoil CBCID Cr.No.02 of 2020 under



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Sections 354(A), 354(C), 354(D), 420, 385 and 506(i) IPC, Section 4 of TNPHW Act & Sections 66(E), 67 and 67(A) of IT Act 2000 altered into Sections 354(A), 354(C), 354(D), 385, 420, 506(i), 294(b) and 201 IPC & Section 4 of TNPHW Act 2002 & Sections 66(E), 67 and 67(A) of IT Act 2000 (Mother Case in Kottar Police Station - Cr.No.503/2020 - under Sections 354(A), 354(C), 354(D), 420, 385 and 506(i) IPC, Section 4 of TNPHW Act and Sections 66(E), 67 and 67(A) of IT Act 2000 reassigned).

(ii) Nagercoil CBCID Cr.No.04/2020 under Sections 420 and 406 IPC and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 altered into Sections 420, 406, 419, 465, 467, 468, 471, 384, 506(i), 109, 294(b) and 120(B) IPC r/w. 34 IPC & 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 (Mother case in Vadasery Police Station - Cr.No.316/2020 - under Sections 420 and 406 IPC & Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003)

(iii) Nagercoil CBCID Cr.No.05/2020 under



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Sections 376, 354(A), 354(C) and 323 IPC & Section 66(E) and 67(A) IT Act 2000 altered into Sections 376, 354(A), 354(C), 323, 120(B), 201 IPC & 66(E) and 67(A) IT Act 2000 (Mother case in Nagercoil All Women Police Station - Cr.No.18/2020 - under Sections 376, 354(A), 354(C) and 323 IPC & Sections 66(E) and 67(A) IT Act 2000).

(iv) Nagercoil CBCID Cr.No.06/2020 under Sections 376, 511, 354(A), 323, 506(i) IPC & 67(A) IT Act 2000 altered into Sections 417, 376 r/w. 511, 354(A), 354(B), 354(C), 354(D), 323, 294(b) and 506(i) IPC r/w. 201 IPC & Section 4 of TNPWH Act 2012 and Sections 66 and 67(A) IT Act (Mother case in Nagercoil All Women Police Station - Cr.No.19/2020 under Sections 376, 511, 354(A), 323 and 506(i) IPC & 67(A) IT Act 2000)

(v) Nagercoil CBCID Cr.No.07/2020 under Sections 4, 5(1), 6 of POCSO Act and Section 67 IT Act 2000 altered into Sections 406, 417, 420, 366, 376, 394(b), 506(i), 305 r/w. 511 IPC r/w 201 IPC & Sections 5(1), 6, 9(1), 10, 11(iv), (v), (vi), 12, 14(3), 15, 17 of POCSO Act 2012 & Section 67(B) of IT



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Act 2000 (Mother case in Kanniyakumari All Women Police Station - Cr.No.13/2020 under Sections 4, 5(1), 6 of POCSO Act & Section 67 IT Act 2000).

10. The learned Additional Public Prosecutor further submits that in Cr.No.07 of 2020, charge sheet has been filed and the same was taken on file as Special S.C.No.61 of 2022 pending on the file of POCSO Court and charge is yet to be framed. In Cr.No.6 of 2020, charge sheet is filed and the same is pending as P.R.C.No.51 of 2021 on the file of the learned Judicial Magistrate No.I, Nagercoil. In both the cases, the victims were not examined. If the petitioner is released on bail, he would definitely tamper with the witnesses and drag on the trial proceedings. In support of his contentions, the learned Additional Public Prosecutor has also relied upon the Judgment of the Hon'ble Apex Court in the case of ***Prasanta Kumar Sarkar vs. Ashis Chatterjee and another*** reported in ***2010 14 SCC page 496***.

11. This Court considered the rival submissions

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made and also perused the materials available on record.

12. The petitioner is the second accused in this case and he was arrested on 30.06.2020 and is in judicial custody for more than 25 months. In this case, the final report was filed on 23.01.2021 and the same was also committed to the Court of Sessions and is now pending before the Mahila Court, Nagercoil in S.C.No.41 of 2021. The charges were also framed on 08.06.2022 and the main witnesses/victims were also examined. This Court, while considering the earlier bail petitions filed by the petitioner in Crl.O.P.(MD)Nos.7659 and 7661 of 2022, vide common order dated 29.06.2022, granted bail to the petitioner in Cr.No.4 of 2020 and rejected to grant bail in Cr.No.8 of 2020, considering the fact that the charges were not framed at that point of time and the main witnesses/victims were not examined. However, this Court, while dismissing the earlier application filed in Crl.O.P.(MD)No.7661 of 2022, recorded reasons for dismissal of the bail petition



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and also granted liberty to the petitioner to renew his bail petition as and when the victims in this case are examined and the cross examination is also completed. By referring that the charges have been framed and the victims have also been examined, this sixth bail petition is filed.

13. As rightly pointed by the learned counsel for the petitioner, the allegation against the petitioner, as per the final report, is that after knowing about the incident, the petitioner, in order to protect his son Kasi/A1, took all the electronic gadgets of his son and hid them in a rice bag and concealed the evidence. Even assuming that the allegations are proved by the prosecution, the petitioner is liable to be punished for a maximum period upto three (3) years. Already, the petitioner is in judicial custody for more than 25 months from the date of his arrest, i.e. on 30.06.2020. Further, the petitioner is also a disabled person with 50% disability and also a chronic diabetic patient.



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14. Considering the petitioner's age, his ailments, nature of allegations levelled against him, the period of incarceration undergone by him and also considering the stage of the case, this Court is inclined to grant bail to the petitioner.

15. Accordingly, the Criminal Original Petition is ordered. The petitioner is directed to be released on bail on his executing a bond for a sum of Rs.2,00,000/- (Rupees Two Lakhs only) with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Mahila Court, Nagercoil and on further conditions that:

[a]the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Judge may obtain a copy of their Aadhar card or bank pass book to ensure their identity.

[b] the petitioner shall also file an affidavit of undertaking before the trial Court that he would not tamper with the witnesses and co-operate the trial by cross examining the remaining witnesses, without taking further time.

[c] the petitioner shall report before the trial Court, on all hearing dates, without fail.



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[d]the petitioner shall not abscond either during investigation or trial.

[e]the petitioner shall not tamper with the evidence or witness either during investigation or trial.

[f]On breach of any of the aforesaid conditions, the learned Judge/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 Judge/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 absconds, a fresh FIR can be registered under Section 229A IPC.

(B P J)
24.08.2022

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TO

1. The learned Sessions Judge,
Mahila Court, Nagercoil
2. The Superintendent,
Central Prison,
Palayamkottai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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B . PUGALENDHI , J

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ORDER
IN
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