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CRL.O.P(MD)N



22

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2022

PRESENT

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

CRL.O.P (MD) No.21356 of 2022

M.Nagarajan

...Petitioner/Sole Accused

-vs-

State represented by
The Inspector of Police,
Sethunganallur Police Station,
Thoothukudi District.
(in Cr.No.95 of 2022)

...Respondent/ Complainant

For Petitioner : Mr.P.Rajkumar, Advocate

For Respondent : Mr.A.Albert James
Government Advocate (Crl.side)

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

PRAYER: Criminal Original Petition filed under Section 438 of Cr.P.C, praying to enlarge the petitioner on bail in the event of his arrest by the respondent Police with respect to Cr.No.95 of 2022.

ORDER : The Court made the following order :-

The petitioner, who apprehends arrest at the hands of the respondent Police for the offences punishable **(*)under Sections 366 (A) IPC, 5(L) 6 of POCSO Act and Section 9 of Prohibition of Child Marriage Act** in Crime No.95 of 2022 on the file of the respondent Police, seeks anticipatory bail.

2.The case of the prosecution, as per the de-facto complainant, Paulsamy, is that her minor daughter aged 17 years old, born on 17.08.2004, was found missing from 11.07.2022 and the de-facto complainant suspected that the accused, Nagarajan would have kidnapped her daughter. Based on the complaint, a case was registered initially for the offence under Section 363 Cr.P.C. During the course of investigation, it was found that the accused had kidnapped the victim girl and performed the child marriage and had also committed repeated penetrative sexual assault, thereby, the case came to be altered for the offences under Sections 366(A) IPC, Section 6 of POCSO Act and Section 9 of Prohibition of Child Marriage.

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3.The learned Counsel for the petitioner would submit that the petitioner is an innocent and the petitioner and the victim girl are known each other for a long time and there was a love affair between them. Since it was reprimanded by the parents of the victim girl, the victim girl eloped from the house and both of them went to Thirukurungudi, Tirunelveli District and stayed in a friend's house. The petitioner being aged 24 years old without understanding the consequence and rigors of POCSO Act, had married the victim girl in a temple and thereafter, they had consensual physical relationship with each other. Subsequently, coming to know of the registration of the case, the petitioner had sent the victim back to her house. He would submit that subsequently, the victim has attained majority on 17.08.2022 and she has left her parents and with the blessings of both parents, the petitioner and the victim girl are living as husband and wife.

4.He would further submit that in the statement of the victim under Section 164 Cr.P.C., the victim girl has stated that the relationship was consensual in nature and she has voluntarily gone along with the petitioner and the marriage was also with her consent and that she and the petitioner living as husband and wife. He would also submit that if the petitioner is arrested, it will cause great prejudice to the petitioner as well as the victim girl. The petitioner undertakes that he would marry the victim when she attains marriageable age and hence, he seeks anticipatory bail.

5.The learned Government Advocate (Crl.side) would submit that the petitioner had kidnapped the minor daughter of the de-facto complainant and the petitioner had performed child marriage and committed repeated penetrative sexual assault on the minor girl. However, the victim has now attained majority and the respondent also understand that the victim is now living with the petitioner as husband and wife.

6.Taking into consideration the facts and circumstances of the case and on perusing the 164 Cr.P.C. statement of the victim girl, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

7.Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date on which the order copy made ready, before the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, 2012, Thoothukudi District, on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:



[a] the petitioner and 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 report before the respondent police everyday at 10.30 a.m., for a period of two weeks and thereafter, every Saturday at 10.30 am until further orders.

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

[d] the petitioner shall not abscond 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 absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-

09/12/2022

**(*)Amended as per order of the Court dated
09/12/2022 in Cr1 MP(MD)No.15405 of 2022 in
Cr1 OP(MD)No.21356 OF 2022**

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/12/2022

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

TO

- 1 THE SESSIONS JUDGE
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES
UNDER POCSO ACT, 2012, THOOTHUKUDI DISTRICT.
- 2 THE INSPECTOR OF POLICE
SETHUNGANALLUR POLICE STATION, THOOTHUKUDI DISTRICT.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.P.RAJKUMAR, Advocate (SR-14787[I] dated 13/12/2022)

ORDER

IN

CRL OP(MD) No.21356 of 2022

Date :09/12/2022

CMR

PKP/SSS/SAR-2/22.12.2022/3P/5C

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