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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2022
CORAM

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

CRL.O.P (MD) No.21481 of 2022

M.Siva

...Petitioner/Sole Accused

-vs-

State rep.by

The Inspector of Police,
All Women Police Station,
Uthamapalayam,
Theni District.
(in Crime No.36 of 2022)

...Respondent/Complainant

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 in Cr.No.36 of 2022 on the file of the Inspector of Police, All Women Police Station, Uthamapalayam, Theni District.

For Petitioner : Mr.P.Gunasekaran, Advocate

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

O R D E R

The petitioner, who apprehends arrest at the hands of the respondent police for the offences punishable under Section 9 of Prohibition of Child Marriage Act, 2006 and Sections 5(j)(ii) r/w Section 6 of POCSO Act, in Crime No.36 of 2022 on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution as per the de-facto complainant is that she was born on 23.05.2005 and she is now 17 years old. The de-facto complainant is an orphan and that she was suffering from epilepsy and that her father and mother passed way and thereafter, she was taken care by her grandfather, who had also passed away within six months from the demise of her mother. The further case is that she was suffering from epilepsy and that the accused, Siva had helped during that time. Thereafter, taking into consideration her pathetic situation, the accused had offered to marry her and thereby, on 01.06.2022, they got married at Petchiamman Temple at K.Ruthupatti and subsequently, they were living as husband and wife, due to which, she has become pregnant. When she was four months



pregnant, on 22.11.2022, she suffered epilepsy and her husband had taken her to hospital and the Doctor, who came to know that she was a minor, had intimated the same to the respondent Police. Hence, the case.

3. The learned Counsel for the Petitioner would submit that the Petitioner is an illiterate. He would further submit that the de-facto complainant is known to the petitioner from her childhood and she has lost her parents and her grandfather and that taking into consideration of her pathetic situation, when the petitioner had offered to marry her, and on her agreeing, the marriage was performed. He would submit that the petitioner, without understanding the rigors and consequence of the provisions of the Child Marriage Act as well as POCSO Act, had performed the marriage. He would submit that even as per the complaint, the victim had stated that she had agreed for the marriage and the physical affair was consensual in nature.

4. The learned Government Advocate would submit that the petitioner had married the minor victim girl and she is four months pregnant. On the information given by the Doctor, the case was registered and he opposes to grant anticipatory bail to the petitioner.

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

6. 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 Mahila Court, Judicial Magistrate level, Theni, Theni 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/-

05/12/2022

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

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TO

1. THE JUDGE, MAHILA COURT,
JUDICIAL MAGISTRATE LEVEL,
THENI, THENI DISTRICT.
2. -DO- THROUGH
THE CHIEF JUDICIAL MAGISTRATE,
THENI DISTRICT.
3. THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
UTHAMAPALAYAM, THENI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER

IN

CRL OP(MD) No.21481 of 2022

Date :05/12/2022

SP/SSS/SAR III/08/12/2022/3P/5C