



CrI.OP.No.4887 of 2023

A.D.JAGADISH CHANDIRA, J.

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The petitioner who apprehends arrest at the hands of the respondent police for the offences punishable under Girl Missing and altered into Sections 363, 366 of IPC and Sections 3 and 4 of POCSO Act and Section 9 of Prohibition of Child Marriage Act, 2006 in Crime No.35 of 2023, seek anticipatory bail.

2. The case of the prosecution as per the defacto complainant Amudha is that her minor daughter aged about 16 years studying 12th standard would gone to school on 02.03.2023 and she did not come back to home. On the complaint given, the case in Cr.No.35 of 2023 came to be registered for girl missing. During the course of investigation, it came to light that the accused had kidnapped the victim girl and thereafter committed penetrative sexual assault and also performed child marriage with her. Later came to know the registration of the case, he has brought back and dropped the girl. Hence, the case.

3. The learned counsel for the petitioner would submit that the petitioner is an innocent. He would further submit that there was a love



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affair between the petitioner and the victim girl and they have without understanding the consequences and rigors of the POCSO Act, had indulged in consensual physical relationship. Later, it came to be known to the parents of the defacto complainant, they reprimanded the girl and they also without understanding the rigors of child marriage act had conducted marriage between the petitioner and the victim girl. He would further submit that the victim girl has been secured and medical examination also been conducted and he would further submit that the petitioner is ready to subject himself for any action of investigation even by giving his samples for conducting DNA test if required by the respondent police. Hence, he prays to grant anticipatory bail to the petitioner.

4. The learned Government Advocate (CrI. Side) would submit that the petitioner had kidnapped the minor victim girl and performed child marriage and also committed penetrative sexual assault on the victim girl. He would submit that the victim girl has been secured, however, he would object for granting of bail by stating that DNA test has to be conducted on the petitioner.



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5. At this juncture, the learned counsel for the petitioner would submit that in the event the respondent requiring DNA test, the petitioner is ready to offer his samples.

6. Taking into consideration the facts and the submissions made by the counsel, this Court is inclined to grant anticipatory bail with certain conditions.

7. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on her appearance, within a period of fifteen days from the date on which the order copy made ready, before the *learned Judicial Magistrate Court, Kariamangalam* 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 on every day at 10.30 a.m for a period of two weeks and thereafter every Saturday at 10.30 a.m. Under further orders in the event of respondent seeking for DNA Test, the petitioner shall co-operate by giving his samples.

[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.

06.03.2023

Vv



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