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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2023

CORAM

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

Crl.O.P.No.5682 of 2023

D.Rajadurai ... Petitioner

Vs.

The State represented by,
The Inspector of Police,
Andimadam Police Station,
Ariyalur District.

(Crime No.386 of 2022). ... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C., pleased to enlarge the petitioner on bail, in connection with the Crime No.386 of 2022, pending investigation on the file of the respondent Police.

For Petitioner : Mr.S.Ambedkumar

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor

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O R D E R

The petitioner, who was arrested and remanded to judicial custody on 13.01.2023, for the offences punishable under Sections 354A, 366, 376(3), 376(2)(n) of IPC and Sections 5(l)(n) r/w 6 of Protection of Children from Sexual Offences Act, 2012 and Section 9 of Prohibition of Child Marriage Act, 2006, in Crime No.386 of 2022, on the file of the respondent police, seeks bail.

2. The case of the prosecution as per the *de-facto* complainant, Amsavalli, is that the accused, had kidnapped her minor daughter and when she had contacted him through mobile phone, he had threatened her that if she had come in search of her daughter, her daughter will be done to death. Based on her complaint, a 'Girl Missing' case in Crime No.386 of 2022came to be registered. Later, during the course of investigation, it came to light that the accused had taken the victim to Bengaluru, where, he had kept her in confinement and had committed penetrative sexual assault on her. Hence the case.

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3. Learned counsel appearing for the petitioner submitted that the petitioner, who is an innocent person aged about 25 years, and the minor victim girl are known to each other. He further submitted that the father of the victim is a drunkard, who used to harass his family, thereby, the victim had contacted the petitioner for solace and during such time, there developed a friendship between them. He also submitted that the victim, unable to bear the torture of her father, eloped with the petitioner and the petitioner, without understanding the consequences and rigours of the Protection of Children from Sexual Offences Act and the Child Marriage Act, had taken the minor victim girl to Bengaluru, where they lived as husband and wife. He also submitted that the petitioner understands that statement under Section 164 Cr.P.C., has been recorded from the victim girl, wherein, she has also stated that she accompanied the petitioner on her own volition and the relationship between them was consensual. He further submitted that the petitioner is in custody from 13.01.2023, hence, he prays for grant of bail to the petitioner.

4. Learned Additional Public Prosecutor appearing for the respondent police submitted that the petitioner has kidnapped the minor

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victim girl, aged about 14 years and taken her to Bengaluru, where, he had committed penetrative sexual assault on her. He further submitted that the medical examination has been completed and the statement under Section 164 Cr.P.C., has also been recorded from the minor victim girl. He also submitted that charge sheet has been filed and it is yet to be taken on file, however, he vehemently opposed to grant bail to the petitioner.

5. Heard the learned Counsel for the petitioner and the learned Additional Public Prosecutor and perused the materials available on record including the statement recorded from the victim girl under Section 164 Cr.P.C.

6. Taking into consideration the facts and circumstances of the case, the submissions made by the learned counsel for the petitioner and taking note of the statement recorded from the victim girl under Section 164 Cr.P.C. and also considering the period of incarceration undergone by the petitioner, this Court is inclined to grant bail to the petitioner with certain conditions.

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7. Accordingly, the petitioner is ordered to be released on bail on his executing 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 **learned Judicial Magistrate No.2, Jayamkondam,** and on further conditions that:

[a] 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 appear before the learned Sessions Judge, Fast Track Mahila Court, Ariyalur, on all working days at 10.30 a.m., until further orders. However, it is made clear that the petitioner shall not enter into the jurisdictional limits of the respondent police, until further orders;

[c] the petitioner shall not abscond either during investigation or trial;

[d] the petitioner shall not tamper with evidence or witness 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

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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 abscond, a fresh FIR can be registered under Section 229A IPC.

10.03.2023

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To

1. The Judicial Magistrate No.2, Jayamkondam.

2. The Sessions Judge,
   Fast Track Mahila Court,
   Ariyalur.

3. The Inspector of Police,
   Andimadam Police Station,
   Ariyalur District.

4. The Sub Jail,
   Jayamkondam.

5. The Public Prosecutor,
   High Court of Madras.

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A.D.JAGADISH CHANDIRA.,J.

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