



Crl.O.P.No.5723 of 2023

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A.D.JAGADISH CHANDIRA, J.

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 and Sections 5(1), 5(j)(ii) and 6 of POCSO Act, in Crime No.5 of 2023, seeks anticipatory bail.

2. The case of the prosecution as per the defacto complainant Tharani is that her step brother/petitioner herein had developed love affair with her daughter who was studying XII Standard, and hence, she reprimand her daughter and the petitioner. While so, on 20.05.2022, the petitioner kidnaped her daughter and performed child marriage with her and committed sexual assault on her due to which, she became pregnant and delivered a female child on 08.02.2023. Hence, the case.

3. The learned counsel for the petitioner submitted that the petitioner and the defacto complainant are step siblings. The petitioner was having love affair with the daughter of the defacto complainant and since it was objected to by the defacto complainant, the victim eloped



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from the house and joined the petitioner. He further submit that the victim had compelled the petitioner to marry her stating if he does not marry her, she would commit suicide and thereby, the petitioner married her in a temple and they lived together as husband and wife. The petitioner hails from lower standard of society and he was not aware of the rigorous of the POCSO Act. He submitted that the victim is now 17 years 6 months and the petitioner is also ready to perform legal marriage after she attains majority. Further the victim was examined by the police and she was also taken to the Court, wherein her statement was recorded under Section 164 Cr.P.C., in which also, the victim has clearly stated the relationship between the petitioner and herself was consensual in nature and only on her compulsion, the petitioner had married her and thereafter, they lived together as husband and wife. Hence, he prayed for grant of anticipatory bail to the petitioner.

5. The learned Government Advocate (Crl. Side) submitted that the petitioner who is the step brother of the degfacto complainant, had kidnaped the minor daughter of the defacto complainant and preformed



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child marriage and had committed penetrative sexual assault on her due to which, the victim got pregnant and she also delivered a female child on 08.02.2023. He further submitted that the statement of the victim which was recorded under Section 164 Cr.P.C. has not supported the case of the prosecution. However, he opposed for grant of anticipatory bail to the petitioner.

6. Heard both sides and perused the materials available on record including FIR and the statement of the victim recorded under Section 164 Cr.P.C.

7. Taking into consideration, the facts and circumstances of the case and also considering the statement of the victim recorded under Section 164 Cr.P.C., this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

8. 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



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from the date on which the order copy made ready, before the **Special Court under POCSO Act, Cuddalore**, 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 daily at 10.30 a.m., for a period of two weeks and thereafter, on every Saturday at 10.30 a.m., until further orders.

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



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[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.

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