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Crl.O.P.No.9270 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2023

CORAM

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

Crl.O.P.No.9270 of 2023

Thambidurai @ Vetri

... Petitioner

Vs.

State rep. by
The Inspector of Police
Karimangalam Police Station
Dharmapuri District.

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleaded to grant bail to the petitioner pending investigation in Crime No.22
of 2023, on the file of the respondent herein.

For Petitioner : Mr.M.Mohammed Riyaz

For Respondent : Mr. C.E.Pratap
Government Advocate (Crl. Side)

ORDER

The petitioner, who was arrested and remanded to judicial custody
on 25.03.2023, for the offences punishable under Sections 363, 366 IPC and
Section 5(1) r/w 6 of POCSO Act, in Crime No.22 of 2023 on the file of the
respondent police, seeks bail.



2. The case of the prosecution is that initially the case came to be registered in Crime No.22 of 2023 for “girl missing” on the complaint of one Krishnan alleging that his minor was missing from 20.01.2023. Thereafter, during the course of investigation, it came to light that the petitioner had kidnapped the daughter of the defacto complainant and committed penetrative sexual assault on her. Hence, the offences were altered as stated above.

3. The learned counsel for the petitioner would submit that the petitioner and the victim girl are known to each other for a long time and there was a love affair between them. While so, the parents of the victim had arranged the marriage of the victim girl with some other person against her wishes and thereby, the victim girl came out from her house and joined the petitioner and that the petitioner and the victim girl without understanding the consequences of POCSO Act, eloped from their house and travelled out of their village. Later, on coming to know about the registration of the case, they both surrendered before the respondent and the petitioner was shown to be arrested. Thereafter, the petitioner filed an application in Cr.M.P.No.511 of 2023 before the Fast Track Mahila Court, Dharmapuri, and the concerned Magistrate issued notice to the victim girl and subsequently, the victim girl



appeared before the Court and stated that there was a love affair between her and the petitioner and she has also expressed her no objection for grant of bail to the petitioner, however, the learned Judge dismissed the bail application filed by the petitioner by order dated 12.04.2023. He further submitted that the petitioner has been in judicial custody from 25.03.2023 and the major part of investigation is also over and hence, he prayed for grant of bail to the petitioner.

4. The learned Government Advocate (Criminal Side) for the respondent vehemently opposed to grant bail to the petitioner stating that the petitioner kidnapped the minor victim girl aged 17 years and 7 months and committed penetrative sexual assault on her and that the investigation is pending.

5. Heard the learned Counsel for the petitioner and the learned Government Advocate (Crl. Side) and perused the materials available on record including the FIR and the dismissal order in Cr.M.P.No.511 of 2023 dated 12.04.2023 passed by the Fast Track Mahila Court, Dharmapuri.

6. In the above said dismissal order it is stated that the victim girl had appeared before the Court and expressed her no objection for grant of



bail to the petitioner. However, the concerned Magistrate has dismissed the bail application filed by the petitioner.

7. Considering the above facts and circumstances of the case and the submissions made by the learned counsel on either side and the period of incarceration undergone by the petitioner, this Court is inclined to grant of bail to the petitioner with certain conditions.

8. 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, Palacode**, 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 stay at Chennai and report before the Flower Bazaar Police Station, everyday at 10.30 a.m. 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;



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

26.04.2023

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To

1. The Judicial Magistrate,
Palacode.
2. The Inspector of Police
Karimangalam Police Station
Dharmapuri District.
3. The Inspector of Police
Flower Bazaar Police Station, Chennai.
4. The Jailer,
District Prison,
Dharmapuri.
5. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA,J.,

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