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Crl.O.P.No.9725 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 366 IPC and Section 9 of Child Marriage Act read with Section 5(l) and 6(1) of POCSO Act, in Crime No.15 of 2023, on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution is that the case came to be registered on the complaint given by one Saravanan that his minor daughter was missing from 09.04.2023. Based on the complaint initially the case was registered in Crime No.15 of 2023 for “Girl Missing” and during the course of investigation, it came to light that the petitioner had kidnapped the minor victim girl, married her and also committed penetrative sexual assault on her. Hence, the case was altered to Sections 366 IPC and Section 9 of Child Marriage Act read with Section 5(l) and 6(1) of POCSO Act.



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3. The learned counsel appearing for the petitioner submitted that the petitioner is an innocent and he has been falsely implicated in this case. He would submit that the petitioner had earlier approached the defacto complainant/father of the victim girl with a proposal to marry the elder sister of the victim girl and since, the elder sister of the victim girl did not like the petitioner, the earlier marriage proposal was stopped. Thereafter, the victim girl had contacted the petitioner and expressed her willingness to marry the petitioner and she had also stated that she was a major. Believing the same, the petitioner had agreed to marry her, whereas the parents of the victim girl did not agree for their marriage pointing out their age difference. Therefore, the victim girl eloped with the petitioner and without understanding the consequences, they had stayed in their relatives house for 5 days during such time there was a consensual affair between them. Thereafter, on coming to know about the registration of the case, the petitioner sent back the victim girl and the victim girl is now under the custody of her parents. The petitioner understands that the statement of the victim girl has been recorded under Section 164 Cr.P.C. wherein, she has admitted that she had inclination to



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marry the petitioner and thereby, she had gone along with the petitioner and there was a consensual relationship between them. He further submitted that the petitioner is ready to file an affidavit of undertaking before the Magistrate that he is ready to marry the victim girl once she attains majority. Hence, he prays for grant of anticipatory bail to the petitioner.

4. The learned Government Advocate (Crl. Side) appearing for the respondent vehemently opposed for grant of anticipatory bail to the petitioner stating that the petitioner abducted the minor victim girl, married her and committed penetrative sexual assault on her. He further submitted that the statement of the victim girl has been recorded under Section 164 Cr.P.C. wherein, she has stated that he had voluntarily gone along with the petitioner.

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 Statement of the victim recorded under



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Section 164 Cr.P.C.

6.Taking note of the facts and circumstances of the case and the submissions made by the learned counsel on either side, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

7.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 Sessions Judge (Fast Track Mahila Court), Dharmapuri**, 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 petitioners 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.



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[b] the petitioner shall report before the respondent police everyday at 10.30 a.m. until further orders.

[c] the petitioner shall file an affidavit of undertaking before the Magistrate at the time of executing bond that he is ready to marry the victim girl once she attains majority.

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

[e] the petitioner shall not abscond either during investigation or trial.

[f] 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].

[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

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