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CrI.O.P.No.10761 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.05.2023

CORAM

THE HON'BLE MR. JUSTICE **SUNDER MOHAN**

CrI.O.P.No.10761 of 2023

M.Boobalamurugan

... Petitioner

Vs.

State Rep. By
The Inspector of Police,
W-35, All Women Police Station,
Tambaram.
(Crime No.24 of 2021)

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleaded to enlarge the petitioner on bail in Crime No.24 of 2021 pending
investigation on the file of the respondent police.

For Petitioner : Mr.M.Mohan

For Respondent : Mr. E.Rajthilak
Additional Public Prosecutor

For Intervenor : Mr.Adhithya Varadharajan



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ORDER

The petitioner, who was arrested and remanded to judicial custody on 27.03.2023, for the offences punishable under Sections 12 & 17 of Protection of Children from Sexual Offences Act, 2012 r/w. 67 of information Technology Act, in Crime No.24 of 2021 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the petitioner is the father of the victim girl and he has shown the obscene videos to the victim girl and committed the offences under Sections 12 & 17 of POCSO Act 2012 r/w. 67 of information Technology Act. Hence, the case.

3. The learned counsel for the petitioner would submit that the matrimonial dispute has been falsely projected as a case of offence under POCSO Act. He would submit that the minor victim girl is a pawn in the dispute between the husband and wife. He would submit that the defacto complainant had given a false complaint against the petitioner and his brother. The brother of the petitioner had moved anticipatory bail before this Court in Crl.O.P.No.5444 of 2020 and this Court observed that the alleged complaint given by the defacto complainant is only to settle score against the



petitioner and his brother and this Court also recorded the fact that the investigation has been completed and the statement under 164 Cr.P.C has also been recorded from the victim girl and this Court granted anticipatory bail to the brother of the petitioner. He further submitted that the petitioner is in judicial custody from 27.03.2023. Hence, he prayed for grant of bail to the petitioner.

4. The learned Additional Public Prosecutor appearing for the respondent police vehemently opposed to grant bail to the petitioner stating that the petitioner along with his brother have shown the obscene videos to the victim girl. He further submitted that the statement under 164 Cr.P.C has been recorded from the victim girl.

5. Mr.Adhithya Varadharajan, learned counsel for the intervenor would vehemently opposed to grant bail to the petitioner stating that the trial Court has rightly dismissed the bail application for the reason that the offence committed by the accused is very grave in nature and if the petitioner is granted bail, there is a every possibility to tamper the witnesses and abscond.



6. Heard the learned Counsel appearing for the petitioner, the learned Additional Public Prosecutor appearing for the State and the learned counsel appearing for the intervenor and perused the entire materials available on record including the statement recorded under Section 164 of Cr.P.C from the minor victim girl.

7. This Court finds that the allegations against the petitioner and the his brother is that they had shown videos to the petitioner's daughter. Admittedly there was a matrimonial dispute between the defacto complainant/mother of the victim girl and the petitioner, this Court had observed in the anticipatory bail granted to the brother of the petitioner that the minor victim girl being used as a pawn by the defacto complainant to settle her score against the petitioner.

8. The order of this Court in Crl.O.P.No.5444 of 2022 dated 09.03.2022, the relevant paragraph is extracted hereunder;

“This Court on perusing the CD file as discussed above, finds that the minor girl being used as pawn by the defacto complainant to settle her score against her husband and the petitioner herein. Even if the allegation are all true, the 164 statement of the minor girl has already been recorded and there is no fear of tampering of witnesses, since 164 statement of the witness could be used as an evidence under the POCSO Act during the trial and



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if any attempt to tamper the evidence or distort the evidence is made by the petitioner herein, it is always open to the investigating officer to proceed against the petitioner in accordance with law”

9. Considering the above facts and circumstances of the case, the submissions made by the learned counsel on either side and also considering the period of incarceration undergone by the petitioner, this Court is inclined to grant bail to the petitioner on the following conditions;

[a] 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**, for a like sum to the satisfaction of the **learned Additional Sessions Judge, (Special Court for Trial of Offences under POCSO Act), Chengalpet District.**

[b] 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;

[c] the petitioner shall report before the respondent police daily at 10.30a.m., until further orders;

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

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



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

10.05.2023

mpa/lpp

To

1. The Additional Sessions Judge, (Special Court for Trial of Offences under POCSO Act), Chengalpet District.
- 2.The Inspector of Police,
W-35, All Women Police Station,
Tambaram.
3. The Sub Jail, Chengalpet.
4. The Public Prosecutor,
High Court of Madras.



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SUNDER MOHAN,J.,

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