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Crl.O.P.No.10847 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.05.2023

CORAM

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

Crl.O.P.No.10847 of 2023

Kalaiyarasan

... Petitioner/Accused

Vs.

State Rep by
Inspector of Police,
All Women Police Station Pollachi,
Coimbatore.
(Crime No.6 of 2023)

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleaded to enlarge the petitioner on bail in Crime No.6 of 2023 on the file of
the respondent police.

For Petitioner : Mr.S.Valarmathi
For Respondent : Mr. E.Raj Thilak
Additional Public Prosecutor

ORDER

The petitioner, who was arrested and remanded to judicial custody
on 12.02.2023, for the offences punishable under Sections 5(1), 6 of POCSO
Act and Section 506(i) of IPC in Crime No.6 of 2023 on the file of the
respondent police, seeks bail.



2. The case of the prosecution is that the defacto complainant's daughter and the petitioner are close relatives to each other and that the petitioner was staying in the house of the defacto complainant, since 2020. The petitioner had committed sexual intercourse on the defacto complainant's daughter, who was aged about 17 years at the time of occurrence. Therefore, the complaint was lodged by the defacto complainant on 27.01.2023.

3. The learned counsel for the petitioner would submit that the alleged occurrence said to have been taken place in the year 2020. The complaint was lodged only in the year 2023. It is the case of consensual relationship between the petitioner and the victim girl even as per the prosecution case. The very fact that the victim girl has not lodged any complaint immediately after the occurrence, it shows that the alleged occurrence is not true. Further, there are other disputes between the petitioner and the family members of the defacto complainant. This case is sought to be used to settle score. Hence, he prayed for grant of bail to the petitioner.



4. The learned Additional Public Prosecutor appearing for the respondent police submitted that this is the 3rd bail petition. The victim has given a statement under Section 164 of Cr.P.C stated that she was objected to the sexual intercourse during the year 2020 and the petitioner visited the house of the defacto complainant. The petitioner is a married man and hence he prayed for dismissal of the bail.

5. Heard the learned Counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent police and perused the materials available on record including the FIR.

6. Considering the fact that the defacto complainant and the petitioner are close relatives to each other and the complaint has been given in the year 2023 and that the alleged occurrence is said to have been taken place in the year 2020 coupled with the fact that the investigation is almost completed and the petitioner is in judicial custody for nearly 88 days and also there is change in circumstances, 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**



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sureties, for a like sum to the satisfaction of the learned Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore.

[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 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

lpp/mpa



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To

1. The Principal Special Court for Exclusive Trial
of Cases under POCSO Act, Coimbatore.
2. The Inspector of Police,
All Women Police Station Pollachi,
Coimbatore.
3. The Central Prison, Coimbatore.
4. The Public Prosecutor,
High Court of Madras.



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SUNDER MOHAN,J.,

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