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CrI.O.P.No.11066 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.05.2023

CORAM

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

CrI.O.P.No.11066 of 2023

Basheer Ahamed

... Petitioner/Accused

Vs.

State Rep by
The Inspector of Police,
All Women Police Station,
Thiruvarur, Thiruvarur District.
(Crime No.11 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.11 of 2023 on the file
of the respondent police.

For Petitioner : Mr.Ravichandran Sundaresan

For Respondent : Mr. E.Raj Thilak
Additional Public Prosecutor

ORDER

The petitioner, who was arrested and remanded to judicial custody
on 05.04.2023, for the offences punishable under Sections 6 r/w 5(j)(ii), 5(1),
17 of POCSO Act r/w Sections 9 and 10 of Prevention of Child Marriage Act
in Crime No.11 of 2023 on the file of the respondent police, seeks bail.



2. The case of the prosecution is that his son (A1) married a minor girl aged 16 years and the petitioner abetted with the child marriage between the victim girl and his son. Hence the complaint.

3. The learned counsel for the petitioner submitted that the petitioner's son and the victim girl knew each other and they were in love with each other and decided to get married. He further submitted that the victim girl voluntarily consented for the marriage. Under Mohammedan law, the Puberty is the consideration for marriage and the normal puberty age is treated as 15 years and hence there is no commission of forcible sexual relationship. He further submitted that the petitioner has been falsely implicated in this case. Hence he seeks bail to the petitioner.

4. The learned Additional Public Prosecutor submitted that the petitioner's son had forcibly had sexual relationship with the victim girl and due to which she become pregnant. He further submitted the petitioner had abetted the marriage between the victim girl and his son and hence bail should not be granted.



5. It is seen that the petitioner is the father of the A1 and they all belong to Muslim community and under a bonafide belief that the marriage could be solemnized on attaining puberty, the marriage between the victim and the petitioner's son (A1) was solemnized in the presence of elders on 22.09.2021. It appears that when the victim was admitted in the hospital at the time of pregnancy, on the complaint given by the hospital authorities, the respondent police registered the above offences and thereafter, the petitioner and others were arrested.

6. This is an unfortunate case where the respondent police had not exercised their discretion to arrest in a proper manner. Even assuming that the petitioners have committed the above offences there was no necessity to arrest the petitioner, as the custodial interrogation was not required in this case. The respondent police ought not to have arrested the petitioner. Hence, 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 Judicial**



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Magistrate, Additional Mahila Court, Thiruvarur.

[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 as and when required for interrogation;

[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.

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- 1.The Judicial Magistrate, Additional Mahila Court, Thiruvarur.
- 2.The Inspector of Police,
All Women Police Station,
Thiruvarur, Thiruvarur District.
3. The Superintendent of Prison, Nagapattinam.
4. The Public Prosecutor,
High Court of Madras.



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SUNDER MOHAN,J.,

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