



Crl.O.P.No.12019 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM

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

Crl.O.P.No.12019 of 2023

Krishnasami

... Petitioner

Vs.

The State Rep. by
The Inspector of Police,
Moongilthuraipattu Police Station,
Kallakurichi District.
(Crime No.41 of 2021)

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleased to enlarge the petitioner on bail concerned in Crime No.41 of 2021 on
the file of the respondent.

For Petitioner : Mr.A.Gowtham

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



ORDER

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The petitioner, who was arrested and remanded to judicial custody on 10.03.2021 for the offences punishable under **Sections 341, 354(A), 323, 506(i) IPC r/w Section 9(i), 9(m), 9(n), 10 of POCSO Act** in Crime No.41 of 2021 on the file of the respondent police, seeks bail.

2. The case of the prosecution as per the defacto complainant Sathiya is that her Junior father-in-law had committed aggravated sexual assault upon her minor daughter who is aged about 7 years by groping her breast and he had also bitten her breast. Hence, the case.

3. The learned counsel for the petitioner would submit that the petitioner is an innocent person. The defacto complainant's father-in-law and the petitioner are brothers and there was an existing enmity between them. While so, on account of property dispute, a false complaint has been given against the petitioner. He further submitted that the alleged occurrence is said to have taken place on 07.03.2021, whereas the complaint has been lodged only on 09.03.2021. He further submitted that the petitioner has been languishing in jail for more than 800 days from 10.03.2021 and after completion of investigation, the case was also taken on file in Spl.SC.No.85



of 2021 on the file of the Sessions Judge, Special Court for Exclusive trial of cases under the POCSO Act (FAC), Villupuram and despite the lapse of 803 days, there is no progress in the trial. He would submit that the the petitioner has to engage a counsel to conduct the case. Hence, he prayed for grant of bail to the petitioner.

4. The learned Government Advocate (Crl. Side) appearing for the respondent police vehemently opposed for grant of bail to the petitioner stating that the petitioner who is the Junior grand father of the victim girl, had committed aggravated sexual assault her girl by groping and biting her breast. He further submitted that the petitioner has not engaged any Advocate and despite the offer made by the trial Court to engage a counsel, he refused to do so.

5. Heard the learned Counsel for the petitioner and the learned Government Advocate (Crl. Side) for the respondent police and perused the materials available on record including the FIR.

6. This Court on 25.05.2023, had called for a report from the trial Court with regard to delay in commencement of trial. The report dated 03.06.2023 vide D.No.1700/2023 has been received from the concerned trial Judge wherein, it is stated that the delay in commencement of trial is due to



the inconsistent turn taken by the petitioner/accused in engaging the counsel.

However, taking into consideration the 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 of bail to the petitioner with certain conditions.

7. 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 Sessions Judge, Special Court for Exclusively trial of cases under the POCSO Act, Villupuram**, 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 Villupuram and report before the Inspector of Police, Town police Station, everyday at 06.30 p.m. until further orders; The petitioner shall also appear before the trial Court on all working days at 10.00 a.m. without fail. It is made clear that the petitioner shall not enter into the jurisdictional limits of the respondent police till the completion of trial.

[c] the petitioner shall not abscond during trial;



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[d] the petitioner shall not tamper with evidence or witness during trial;

[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 petitioners 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.

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To

1. The Sessions Judge, Special Court for Exclusively trial of cases under the POCSO Act, Villupuram.
2. The Inspector of Police,
Moongilthuraipattu Police Station,
Kallakurichi District
3. The Central Prison, Cuddalore.
4. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA,J.,

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