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Crl.O.P.No.13297 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2023

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

Crl.O.P.No.13297 of 2023

Chinna Kavundar

... Petitioner

Vs.

The State represented by,
The Inspector of Police,
Rishivanthiyam Police Station
Kallakurichi District.

(Crime No.90 of 2022).

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleaded to enlarge the petitioner/accused on bail in Spl.S.C.No.107 of 2022 in
connection with Crime No.90 of 2022, pending trial on the file of the learned
Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act,
Villupuram.

For Petitioner : Mr.G.Saravanabhavan

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



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ORDER

The petitioner, who was arrested and remanded to judicial custody on 27.04.2022, in Spl.S.C.No.107 of 2022, pending trial on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Villupuram, in connection with Crime No.90 of 2022, registered for the offences punishable under Section 366 of IPC @ Sections 366, 342 of IPC and Section 5(l) r/w 6 of POCSO Act, 2012, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the petitioner had kidnapped the victim girl and repeatedly committed penetrative sexual assault against her will. Hence the case.

3. Learned counsel appearing for the petitioner submitted that this is the sixth application for bail filed by the petitioner and this Court had dismissed the earlier bail applications filed by the petitioner in Crl.O.P.Nos.16167,18465, 21514, 24766 & 31234 of 2022 vide orders dated 13.07.2022, 04.08.2022, 07.09.2022, 13.10.2022 & 23.12.2022 respectively.



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He further submitted that the trial has been commenced in Spl.S.C.No.107 of 2022 and the prosecution has examined PW1/victim and PW2/de-facto complainant, who is the mother of the victim and they have not made any allegation against the petitioner. He also submitted that the petitioner was arrested on 27.04.2022 and he is in custody for more than a year and also submitted that there is no possibility of convicting the petitioner in trial since witnesses 1 & 2 has not supported the prosecution, thereby, the further custody of the petitioner is without any purpose. He further submitted that the petitioner is ready to cooperate for speedy disposal of the trial by cross examining the other witnesses as and when, they are examined by the prosecution. Hence, he seeks for grant of bail to the petitioner.

4. Learned Government Advocate (Crl.Side) appearing for the respondent police submitted that this is the sixth application for bail filed by the petitioner and this Court, taking into consideration the gravity of the offence, had dismissed the earlier bail applications of the petitioner. He further submitted that the witnesses PW1 and PW2 have not supported the case of prosecution and turned hostile, however, the other witnesses are to be examined. Thereby, he prayed for dismissal of the petition.



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5. Heard the learned Counsel for the petitioner and the learned Government Advocate (Crl.Side) and perused the materials available on record including the depositions of the witnesses PW1 and PW2.

6. 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 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** (out of which, one of the sureties should be either father or mother of the petitioner), each for a like sum to the satisfaction of the **learned Principal Sessions Judge, Special Court for Exclusive Trial of Cases under 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;



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[b] the petitioner shall appear before the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Villupuram, on all working days at 10.30 a.m., for a period of two weeks and thereafter, on the date fixed by the learned trial Judge;

[c] the petitioner shall file an Affidavit of Undertaking to the effect that he will co-operate for speedy disposal of the trial;

[d] the petitioner shall not abscond during trial;

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

1. The Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act,
Villupuram.
2. The Principal Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act,
Villupuram.
3. The Inspector of Police,
Rishivanthiyam Police Station,
Kallakurichi District.
3. The Central Jail,
Cuddalore.
4. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA.,J.

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