



Crl.O.P.No.13798 of 2023

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

CORAM

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

Crl.O.P.No.13798 of 2023

Vijay

... Petitioner

Vs.

The State represented by,
The Inspector of Police,
All Women Police Station,
Villupuram.

(Crime No.103 of 2022).

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleased to enlarge the petitioner/accused on bail, in connection with the
Crime No.103 of 2022, pending investigation on the file of the respondent
Police.

For Petitioner : Mr.M.Vijayaragavan

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



Crl.O.P.No.13798 of 2023

WEB COPY

ORDER

The petitioner, who was arrested and remanded to judicial custody on 23.02.2023, in connection with Crime No.103 of 2022 registered for “Girl Missing” and altered for the offences punishable under Section 366 of IPC r/w Sections 5(1) and 6 of POCSO Act, on the file of the respondent Police, seeks bail.

2. The case of the prosecution as per the defacto complainant/ Rajalakshmi is that her minor daughter, aged 16 years was found missing from 15.11.2022. Based on the complaint, a case in Crime No.103 of 2022 was registered for girl missing. During the course of investigation, it came to light that the petitioner had kidnapped the minor victim girl and committed penetrative sexual assault on her, due to which, she became pregnant and later, the pregnancy was aborted. Thereby, the case has been altered to the offence punishable under Section 366 of IPC r/w Sections 5(1) and 6 of POCSO Act. Hence the case.

3. Learned counsel appearing for the petitioner submitted that the petitioner is an innocent person and he is a native of Melamadai, Madurai



CrI.O.P.No.13798 of 2023

and when he had gone to Madurai bus stand on 15.11.2022, he had seen the victim girl in a precarious situation and the petitioner had attempted to take her to the Police Station and the victim had stated that if he takes her to the Police Station, she would commit suicide. Further, she had also stated that she is an orphan and she is a major and believing the same, the petitioner had taken her along with him to his place of work at Tiruppur. He further submitted that the petitioner is working as a call taxi driver and without understanding the consequences and rigours of the Protection of Children from Sexual Offences Act and believing that the victim is a major and an orphan, started living with her, due to which, she became pregnant and after coming to know about the registration of the case, the petitioner surrendered before the respondent on 23.02.2023 and he is in custody for 120 days. He further submitted that on perusal of the statement under Section 164 Cr.P.C recorded from the victim girl, the petitioner comes to understand that the victim has not made any allegations as against him and she has disclosed that, only on her insistence, the petitioner had taken her along with him and that the victim has not made any allegations as if the petitioner has forced her to have a sexual affair and that the relationship between them was consensual in nature. He also submitted that the investigation has been completed and



Crl.O.P.No.13798 of 2023

the final report has been filed and the case has been taken up for trial in Spl.S.C.No.61 of 2023 on the file of the learned Special Judge for exclusive trial of cases under POCSO Act, Villupuram. He Hence, he prayed for grant of bail to the petitioner.

4. Learned Government Advocate (Crl.Side) appearing for the respondent Police submitted that the petitioner had kidnapped the minor victim girl, aged 16 years and committed penetrative sexual assault on her, due to which, she became pregnant and later, the pregnancy was aborted. He fairly conceded that the victim had admitted that the relationship between her and the petitioner was consensual in nature. He also submitted that the investigation has been completed and the final report has been filed and the case has been taken up for trial in Spl.S.C.No.61 of 2023 on the file of the learned Special Judge for exclusive trial of cases under POCSO Act, Villupuram. Hence, he opposed for grant of bail to the petitioner.

5. At this juncture, the learned counsel for the petitioner submitted that the father of the petitioner is no more and mother of the petitioner is present before this Court and filed an affidavit of undertaking stating that she



Crl.O.P.No.13798 of 2023

is ready to perform the marriage between her son and the victim, once she attains majority and she has also stated that the parents of the victim also agreed for performing the marriage. Hence, he prayed for grant of bail to the petitioner.

6. 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 contents of the FIR.

7. 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.

8. 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 should be either the mother or father of the petitioner, each for a like sum to the satisfaction of the **learned Sessions Judge, Special Court for exclusive trial of cases under POCSO Act,**



CrI.O.P.No.13798 of 2023

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 report before the learned Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Villupuram, everyday at 10.30 a.m., for two weeks and thereafter, on the date fixed by the learned Sessions Judge;

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

[d] the petitioner shall not tamper with evidence or witness either during investigation or 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 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]*;



Crl.O.P.No.13798 of 2023

[f] If the accused thereafter abscond, a fresh FIR
can be registered under Section 229A IPC.

26.06.2023

vk

To

1. The Sessions Judge,
Special Court for exclusive trial of
cases under POCSO Act, Villupuram.
2. The Inspector of Police,
All Women Police Station,
Villupuram.
3. The Central Prison,
Cuddalore.
4. The Public Prosecutor,
High Court of Madras.



WEB COPY



Crl.O.P.No.13798 of 2023

A.D.JAGADISH CHANDIRA.,J.

vk

Crl.O.P.No.13798 of 2023

26.06.2023