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Crl.O.P.No.14488 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

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

Crl.O.P.No.14488 of 2023

K.Kalyanasundaram

... Petitioner

Vs.

State rep by
The Inspector of Police
W-1, Thousand Lights,
All Women Police Station,
Chennai.

Crime No.2 of 2023

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleaded to enlarge the petitioner on bail in Spl.S.C.No.99 of 2023 on the file
of the Special Court for trial under POCSO Act, Chennai.

For Petitioner : Mr.K.Suresh Babu

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

ORDER

The petitioner, who was arrested and remanded to judicial custody
on 11.02.2023 for the offences punishable under Sections 5(m) and 6 of
POCSO Act, in Crime No.2 of 2023 in Spl.S.C.No.99 of 2023 on the file of



the Special Court for trial under POCSO Act, Chennai.

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2. The case of the prosecution as per the defacto complainant/ Afrin Haseena is that on the recommendation of one Manickam, one Sundar had come to her house for doing domestic work and he was working from 02.02.2023. While so, on 09.02.2023, the said Sundaram has sexually abused her son, aged 4 years, due to which, her son became sick. Hence the case.

3. The learned counsel for the petitioner would submit that the petitioner is an innocent person and a false complaint has been given. He would further submit the petitioner was engaged by the defacto complainant for doing domestic work in her home and since the defacto complainant did not properly pay the wages, there was a dispute between the petitioner and mother-in-law of the defacto complainant, on account of which, a false complaint has been as if the petitioner has misbehaved with the son of the defacto complainant. He would also submit 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.99 of 2023 on the file of the Special Court for trial under POCSO Act, Chennai and the charges have also been framed against the petitioner. He would further submit that the petitioner was furnished with



the copy of the statement under Section 164 Cr.P.C recorded from the victim and on perusal of the statement would show that the victim has not made any specific allegations against the petitioner other than giving general allegation that the petitioner has misbehaved with him and he has not made any specific allegation of sexual assault against him. He would further submit that there is absolutely no medical evidence to show that the petitioner has committed any offensive act on the victim. He would also submit that the petitioner is in custody from 11.02.2023 and he has to engage a counsel to conduct the trial. Hence, he prayed for grant of bail to the petitioner.

4. The learned Government Advocate (Crl. Side) appearing for the respondent would submit that as per the prosecution, the petitioner is stated to have misbehaved with the son of the defacto complainant, aged 4 years. He would further submit 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.99 of 2023 on the file of the Special Court for trial under POCSO Act, Chennai and the case now stands posted for examination of witnesses on 14.07.2023. Hence, he opposed for grant of bail to the petitioner.

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.

6. Considering the above facts and circumstances of the case, the submissions made by the learned counsel on either side and the period of incarceration undergone by the petitioner and the nature of the allegations, 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 Special Judge for exclusive trial of cases under POCSO Act, Chennai**, 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 report before the learned Special Judge for exclusive trial of cases under POCSO Act, Chennai, on all working days at 10.30 a.m., until further orders;

[c] the petitioner shall not abscond either during



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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 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.

28.06.2023

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To

1. The Special Judge for exclusive trial of cases under POCSO Act, Chennai,
2. The Inspector of Police
W-1, Thousand Lights,
All Women Police Station,
Chennai.
3. The Central Prison,
Puzhall II.
4. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA,J.,

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