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CRL.O.P.No20351 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.CHANDRASEKHARAN**

CRL.O.P.No.20351 of 2022

Chandra

... Petitioner

Vs.

1. Balasubramanian

2. The State Rep. By
The Sub Inspector of Police,
All Women Police Station,
Tiruvannamalai.

... Respondent

Prayer :- Criminal Original Petition filed under Section 482 of Cr.P.C. praying to set aside the order dated 23.03.2022 made in Cr.M.P.No.304 of 2022 passed by the learned Principal Sessions Judge, Tiruvannamalai.

For Petitioner : Mr.J.B.Jawahar

For R1 : Mr.S.Silambuselvan

For R2 : Mr.S.Rajakumar
Additional Public Prosecutor



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ORDER

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This petition has been filed to set aside the order dated 23.03.2022 made in Cr.M.P.No.304 of 2022 passed by the learned Principal Sessions Judge, Tiruvannamalai.

2. The learned counsel for the petitioner submitted that, from the allegations made in the FIR, it is made clear that, petitioner/defacto complainant was subjected to sexual abuse by the 1st respondent on the promise of marrying her. This allegation prima facie makes out a case for registration of FIR under Section 376(2)(n) of IPC. However, FIR was registered only for the offences under Sections 417 and 506(1) of IPC, subsequently, it was altered into Section 376(2)(n), 406 of IPC. It is his further submission that, though FIR allegations make out a case under Section 376 of IPC, originally, FIR was registered only for the offences under Sections 417 and 506(1) of IPC. Therefore, 1st respondent was released within four days from the date of his arrest. Had the FIR had been registered for the offence under Section 376(2)(n) of IPC, there is no possibility of the 1st respondent obtaining bail within four days of his arrest. Though, respondent police has subsequently altered the offence by including the offence under Section



376(2)(n) of IPC, the cancellation of the bail petition filed by the petitioner was dismissed. In the said circumstances, this petition is filed.

3. The learned counsel for the 1st respondent strongly opposes the petition on the ground that, it is not a case of rape and it is a case of consensual sex.

4. The learned Additional Public Prosecutor submitted that, while considering the cancellation of bail petition, alteration report was considered by the learned Principal Sessions Judge, Tiruvannamalai.

5. Considered the rival submissions and perused the records. The FIR allegations shows that, defacto complainant joined K.M.Enterprise as an Admin. 1st respondent/ Balasubramaniam was the Manager in K.M.Enterprise. They developed friendship. On 13.11.2017, when petitioner /defacto complainant was cleaning the staff room at 06.00.p.m., 1st respondent had embraced her. Defacto complainant resisted his move. However, they were loving each other from the year 2017. She had consented for living as husband and wife. Since, they were only persons working in the Office, 1st respondent used to have sexual relationship with her on everyday. She is also fond of him.



One year thereafter, 1st respondent's brother died and therefore, he was sad when he came to the Office. 1st respondent told the petitioner/defacto complainant that, he would marry her and not to worry. Thereafter, he had sexual relationship with her on several times. On 24.08.2021, at about 02.30.p.m., he had sexual relationship with her on the promise of marrying her. On 26.08.2021, a friend of the 1st respondent came there and told that, marriage arrangements was being made for the 1st respondent. When petitioner/defacto complainant asked the 1st respondent as to why he was cheating, he stated to have threatened her.

6. The submission of the learned counsel for the petitioner/defacto complainant is that, 1st respondent on the promise of marrying the defacto complainant had sexual intercourse with her. However, FIR allegations speak otherwise. Their friendship, love and sexual relationship started from the year 2017. Only during the later part of their relationship, probably in the year 2021, petitioner said to have promised to marry the defacto complainant. In the said circumstances, this Court is of the view that, whether the offence under Section 376(2)(n) of IPC is made out or not, now final report is filed also under Section 376 of IPC. Therefore, this Court does not want to make any comment on that.



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7. Considering the facts and circumstances and the allegations made in the FIR, this Court is of the view that, it is a fit case for granting bail and therefore, dismissal of the petition filed for cancellation of bail cannot be faulted.

8. Accordingly, this Criminal Original Petition is dismissed.

18.08.2023

Sma

Internet : Yes/No

Index : Yes/No

Speaking/Non speaking order

To

1. Principal Sessions Judge, Tiruvannamalai

2. The Sub Inspector of Police,
All Women Police Station,
Tiruvannamalai.

3. The Public Prosecutor,
High Court of Madras, Chennai.



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G.CHANDRASEKHARAN,J.

Sma

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