



Crl.O.P.No.18846 of 2023

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G.CHANDRASEKHARAN. J.

The petitioner namely Balakumar, who was arrested and remanded to judicial custody on 16.05.2023 for the offence punishable under Sections 366, 342 and 323 IPC and Section 5(1) r/w 6 of POCSO Act in S.C.No.83 of 2023 in Crime No.10 of 2023 on the file of the respondent police, seeks bail.

2. Learned counsel for the petitioner submitted that, petitioner is falsely implicated in this case in Crime No.10 of 2023 for the offences under Sections 366, 342 and 323 IPC and Sections 5(1) r/w 6 of POCSO Act. He further submitted that, as per the bail dismissal order in Crl.M.P.No.873 of 2023 in para No.4 of the Order, she has stated nothing about the sexual relationship or penetrative sexual assault and from the extract of the medical report, we cannot gather that, penetrative sexual assault was committed against the victim girl. The earlier five bail petitions filed before the lower Court were dismissed. Petitioner is in judicial custody from 16.05.2023. The investigation in this case is completed and final report is filed. Thus, he prays for grant of bail to the petitioner.



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3. Learned Additional Public Prosecutor, opposes this bail petition, on the ground that, this is a case where petitioner committed penetrative sexual assault against a girl aged 14 years. Petitioner is aged 26 years. The statement under Section 164 Cr.P.C of the victim girl was recorded and she very clearly narrated the penetrative sexual assault committed by the petitioner multiple times against her by violence and force. Therefore, he prays for dismissal of this bail petition.

4. Considered the rival submissions and perused the records.

5. The allegations in the first information report shows that, defacto complainant/victim girl had just written 10 std examination. Petitioner is a neighbour of the victim girl. He used to enquire the victim girl, as to what she was studying. On 14.05.2023, at about 5.45 p.m., petitioner approached the victim girl in her house and enquired about her studies and asked her to bring books to his house. Victim girl had taken the books and went to petitioner's house at about 6.00 p.m. Immediately on entering the house, petitioner closed the door and locked it from inside. When victim girl protested, as to why, he was



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locking the door, petitioner embraced her saying that, he is in love with her and bitten her lips. When she raised her voice, he took her shawl and closed her mouth and tied her hands and had forced sexual intercourse three times. When she resisted, he had beaten her on her cheeks. As a result, she fainted. When she woke up after 30 minutes, petitioner had untied her and victim girl rushed to her home and told her grand mother about the incident. Thus, the complaint was given.

5.1.In the Statement of the victim girl recorded under Section 164 Cr.P.C, she had reiterated the allegations made in the first information report. The extract of the medical report is given in the bail order of the trial court reads as follows

- (i) Physical injury (contusion on lower lip), contusion left cheek present.*
- (ii) No genital injury (hymen ruptured)*
- (iii)Forensic lab report negative*
- (iv)however, sexual violence cannot be ruled out.*

5.2. The medical evidence corroborates the vocal statement of the defacto complainant that, petitioner had bitten her lips and had forceful sexual intercourse with the victim girl. Merely, because it was recorded in the bail



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dismissal order, victim's statement that, "victim girl was beaten by her grandmother and therefore, a false complaint is given against the petitioner", we cannot say that, there is no such incident as alleged in the first information report had happened at all. The facts discussed above, *prima-facie* establishes that, petitioner committed penetrative sexual assault against victim girl, who is aged 14 years.

5.3. Considering the nature and seriousness of the offence committed by the petitioner aged 26 years against the victim girl, who is aged only 14 years, this Court is of the view that, releasing the petitioner at this stage would result in denial of fair trial by threatening the witnesses or tampering the evidence, by the petitioner.

6. In such circumstances, this Court is not inclined to release the petitioner on bail. Accordingly, this Criminal Original Petition is dismissed.

17.08.2023

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