



Crl.O.P.No.20355 of 2023

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C.V.KARTHIKEYAN,J.

The petitioner seeks anticipatory bail in Crime No.21 of 2023 registered by the respondent police for the offences punishable under Sections 5(l), 5(m), 5(n) r/w 6 of POCSO Act, 2012, and Section 376(AB) of IPC.

2. The victim child is the daughter of the petitioner herein. It is stated that the occurrence had taken place between August 2013 and August 2020. The complaint was lodged in August 2023.

3. It had been stated by the learned counsel for the petitioner that there was marital dispute between the petitioner herein and his wife and he had also forwarded dates and events.

4. It is seen that in the year 2015, the petitioner had filed a divorce petition against his wife and also filed a petition under Guardian and Wards Act before the Additional Principal Family Court at



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Coimbatore. For a good measure, the wife of the petitioner herein had filed an application under Domestic Violence Act in the year 2016.

5. It is also seen that the wife of the petitioner had also filed an application seeking Restitution of Conjugal Rights in the year 2018. She had also filed petition seeking maintenance against the petitioner herein.

6. It is thus contended by the learned counsel for the petitioner that all these litigations were pending between the petitioner and his own wife.

7. It is stated that if the incident is said to have occurred from the year 2013 onwards it would be highly improbable that his wife would file an application seeking restitution of conjugal rights. It had been stated that in the year 2023, the Additional Principal Family Judge at Coimbatore, had passed common orders in all the pending matters granting divorce to the petitioner and dismissing the petition seeking restitution of conjugal rights filed by the wife. The petition filed under the Guardian and the Wards Act was also dismissed. The maintenance



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case was partly allowed. This aspect is stressed by the learned counsel for the petitioner stating that the petitioner is paying maintenance not only to his wife but also to the victim child.

8. It is also stated that the petitioner herein had filed earlier anticipatory bail in Crl.O.P.No.11658 of 2023 and at that time, the FIR was not registered and a learned Single Judge of this Court by order dated 18.05.2023 had directed enquiry to be conducted and if offence is made out, to register FIR. It had been stated that enquiry had been conducted and FIR was registered. Thereafter, it appears that the victim child had an occasion during that particular period to meet the Additional Principal Judge at Coimbatore, owing to the divorce petition and others petitions pending between the petitioner and his wife wherein, she had revealed certain incidents. That was forwarded to the Child Welfare Committee. Thereafter, FIR had been registered.

9. The learned counsel for the petitioner also stated that the petitioner is innocent and that no such incident had happened and therefore sought anticipatory bail to the petitioner.



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10. The learned counsel for the victim child also intervened in the present application and stated that all the incidents had happened from the year 2013 onwards and out of threat and fear, the victim child had not revealed it. It is also stated that the mother of the victim child had been hospitalized for various medical illness and therefore, there was no possibility of the victim child speaking out.

11. It was also stated that the victim child had revealed everything to the Additional Principal Family Judge at Coimbatore and the complaint was forwarded to the Child Welfare Committee and only after enquiry was conducted, was FIR registered.

12. The learned Government Advocate (Crl. Sife) for the respondent stated that enquiry is ongoing and that the statement under Section 164 Cr.P.C., of the victim had been recorded. He further stated that the victim had made very serious allegations as against the petitioner herein and that therefore, for investigation purposes, the presence of the petitioner is required. It is also contended that investigation had not been completed.



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13. A perusal of statement under Section 164 Cr.P.C., of the victim child shows that the victim child, had given very specific instances wherein, the petitioner had taken advantage of her and also of the absence of her mother, who had been hospitalized and had committed quite serious offences as against the victim child.

14. The learned counsel for the petitioner stated that the petitioner had appeared for enquiry and his statement had also been recorded by the respondent police.

15. I have carefully considered the arguments advanced.

16. This is the case where a daughter had given a complaint against her own father stating that from the year 2013 onwards when she was of quite young age, the father had been continuously exploiting her and had been sexually exploiting her. It is also seen that the mother of the victim child was having continuous litigations with the petitioner and there are various applications filed. The petitioner had filed an



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application seeking divorce and was also filed an application under Guardian and Wards Act. The mother had tried to save the marriage, and had filed an application seeking restitution of conjugal rights and also filed application seeking maintenance and filed a petition under domestic violence. Common orders had been passed on 27.04.2023 by the Additional Principal Family Judge at Coimbatore, wherein, the divorce was finally granted. Once divorce was granted then there is severance in relationship between the petitioner and the mother and to that extent, the victim child got freedom. It must also be noted that orders had also been passed in Guardian and Wards Act, which had been filed by the petitioner herein and which came to be dismissed.

17. The learned counsel for the petitioner states that the petitioner had been paying maintenance for the child. But, that would not take the petitioner anywhere as it is his duty to pay maintenance and to maintain the children. It does not mean that merely because he has paid maintenance no complaint should be lodged against the petitioner herein. It is only during the proceedings before the Family Court that the victim



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was able to speak out and on hearing her complaint, the Additional Principal Family Judge at Coimbatore had forwarded the complaint to the Child Welfare Committee. It is also seen that the Child Welfare Committee had independently examined the issues and only thereafter, was FIR registered.

18. It is of course true, that on an earlier occasion the respondent had closed the complaint. That would not mean that the incidents have never happened. It is only on proper counselling and enquiry by the Child Welfare Committee officials that the actual truth came out.

19. Taking into account the seriousness and nature of the allegations particularly by a daughter against her father, let the investigation be conducted. The petitioner will have to be necessarily taken into custody, I am not inclined to grant anticipatory bail to the petitioner. Accordingly, this Criminal Original Petition stands dismissed.

11.10.2023
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