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Crl.O.P.No.27563 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2023

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

Crl.O.P.No.27563 of 2023

Sathishkumar

... Petitioner

Vs.

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

(Crime No.9 of 2023).

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleaded to enlarge the petitioner/accused on bail, in Spl.S.C.No.51 of 2023,
pending on the file of the Special Court for cases under POCSO Act,
Tiruvannamalai in connection with Crime No.9 of 2023.

For Petitioner : Mr.R.Thirumoorthy

For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl.Side)



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ORDER

The Criminal Original Petition has been filed seeking to enlarge the petitioner on bail in Spl.S.C.No.51 of 2023, pending trial on the file of the Special Court for cases under POCSO Act, Tiruvannamalai, in connection with Crime No.9 of 2023 registered for the offence punishable under Sections 376(3), 506(i) of IPC and Sections 5(l), 5(j)(ii) r/w 6(1) of Protection of Children from Sexual Offences Act, 2012.

2. The case of the prosecution is that the accused/petitioner herein had committed forceful repetitive sexual assault on the victim girl by threatening her and by showing the videos which were taken earlier. Hence the case.

3. Learned counsel appearing for the petitioner submitted that the petitioner is an innocent person, aged about 22 years and his name has been falsely implicated by the victim in this case, since he happens to be the relative of the victim. He further submitted that this is the fourth application



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for bail filed by the petitioner before this Court and the petitioner is in custody from 15.04.2023. He also submitted that it is the case of the prosecution that the victim became pregnant on account of the penetrative sexual assault committed by the petitioner on the victim girl, whereas, the petitioner is very sure that he is not responsible for the pregnancy of the victim and he also feels that it may be the reason for not obtaining a DNA Report, till date. He further submitted that the incomplete charge sheet sans the DNA Report has been been filed and the case has been taken up for trial in Spl.S.C.No.51 of 2023 on the file of the Special Court for cases under POCSO Act, Tiruvannamalai.

4. He also submitted that despite the matter being listed on four occasions for framing charges, the charges have not been framed, due to non availability of the DNA Report. He reiterated that the petitioner is suffering incarceration from 15.04.2023 for not committing any fault and that he has a fair chance of succeeding in the trial. Hence, he prayed for grant of bail to the petitioner, stating that the petitioner is ready to stay far away from the jurisdictional limit where the victim resides and he is also ready to abide by any other stringent conditions that may be imposed by this Court.



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5. Learned Government Advocate (Crl.Side) appearing for the respondent police submitted that it is not a case of love affair. It is the case where the petitioner/accused, who is related to the victim girl, aged about 14 years, as cousin brother, used to go to the house of the victim girl and when no body was there, he had committed repetitive penetrative sexual assault on the victim girl luring her by showing obscene videos and later by threatening her with dire consequences, due to which, the victim girl became pregnant. He further submitted that later, pregnancy of the victim girl has been aborted and the fetus has also been sent for DNA analysis and the Report is awaited and he admitted that the final report sans the DNA Report has been filed and the case stands posted for framing of charges in Spl.S.C.No.51 of 2023 on the file of the Special Court for cases under POCSO Act, Tiruvannamalai. Hence, he opposed for grant of bail to the petitioner.

6. Heard the learned Counsel for the petitioner and the learned Government Advocate (Crl.Side) and perused the materials available on record including the statement recorded under 164 Cr.P.C from the victim girl.



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7. It is seen from the records that this Court had dismissed the earlier bail applications filed by the petitioner in Crl.O.P.Nos.13730, 16012 & 24667 of 2023 vide orders dated 20.06.2023, 02.08.2023 and 01.11.2023 respectively. However, the third bail application in Crl.O.P.No.24667 of 2023 was dismissed as not pressed, since the respondent had submitted that they would produce the DNA Report before the Court and would commence the trial. Despite the same, there is no progress in the trial. Therefore, this Court, taking into consideration the long period of incarceration undergone by the petitioner and also considering the age of the petitioner, 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.15,000/- (Rupees Fifteen thousand only)** with **two sureties (out of which, one of the sureties should be either father or mother of the petitioner)**, each for a like sum to the satisfaction of the **learned Special Court under POCSO Act, Tiruvannamalai**, and on further conditions that:



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[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 appear before the trial Court on all hearing dates, without fail;

[c] the petitioner shall stay at Vellore and report before the Inspector of Police, Sathuvachari Police Station, everyday at 06.30 p.m., until further orders, except on the dates of Court hearing before the trial Court ;

[d] However, it is made clear that the petitioner shall not enter into the jurisdictional limits of the Chengam Police Station, until further orders;

[e] the petitioner shall not abscond during trial;

[f] the petitioner shall not tamper with evidence or witness during trial;

[g] 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]*;



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

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To

1. The Special Court for cases under POCSO Act,
Tiruvannamalai.
2. The Inspector of Police,
All Women Police Station,
Tiruvannamalai District.
3. The Central Prison,
Vellore.
4. The Inspector of Police,
Sathuvachari Police Station,
Vellore.
5. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA.,J.

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