



Crl.O.P.No.28013 of 2023

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM

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

Crl.O.P.No.28013 of 2023

Kathamuthu

... Petitioner

Vs.

The State represented by,
The Inspector of Police,
All Women Police Station
Panruti Taluk,
Cuddalore.

(Crime No.37 of 2022).

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C.,
pleased to enlarge the petitioner/accused on bail, pending trial in S.C.No.153
of 2023, on the file of the learned Sessions Judge, Mahila Court, Cuddalore.

For Petitioner : Mr.K.Selvaraj

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



WEB COPY



CrI.O.P.No.28013 of 2023

ORDER

The Criminal Original Petition has been filed seeking to enlarge the petitioner on bail in S.C.No.153 of 2023, pending trial on the file of the learned Sessions Judge, Mahila Court, Cuddalore, in connection with Crime No.37 of 2022, registered for the offence punishable under Sections 376(2)(1) of IPC.

2. The case of the prosecution as per the *de facto* complainant/Chitra is that on 07.09.2022, the accused had attempted to commit rape on her mentally retarded daughter. Based on the compliant given by the *de facto* complainant, the case has been registered for the offence under Section 376(2)(1) and 511 of IPC. After completion of investigation, the final report has been filed for the offence under Section 376(2)(1) of IPC and the case was taken up for trial in S.C.No.153 of 2023, on the file of the learned Sessions Judge, Mahila Court, Cuddalore.

3. Learned counsel appearing for the petitioner submitted that the petitioner is an innocent person, aged about 35 years and a false case has been foisted against him. He further submitted that this is the fourth



Crl.O.P.No.28013 of 2023

application for bail filed by the petitioner before this Court and this Court had dismissed the earlier bail applications filed by the petitioner in Crl.O.P.Nos.8493, 13152 & 21743 of 2023 vide orders dated 25.04.2023, 23.06.2023 and 25.09.2023 respectively, however, the earlier bail application Crl.O.P.No.21743 of 2023 was dismissed as withdrawn with a liberty to file a fresh petition after examination of the witnesses PW1 to PW3. He further submitted that though the final report has been filed as early as 11.04.2023 and the case has been taken up for trial on the file of the learned Sessions Judge, Mahila Court, Cuddalore, there is no progress in the trial, since there is no presiding officer.

3. He further submitted that the *de facto* complainant, who is an adjacent land owner of the petitioner, had been constructing a house encroaching upon the property of the petitioner and thereby, there was a dispute between them and the local panchayat was also conducted in the village with regard to the same. Thereby, in order to take vengeance, the *de facto* complainant has given a false complaint, as if the petitioner had committed penetrative sexual assault on her mentally retarded daughter, aged about 19 years. He also submitted that the statement of the victim has been



Crl.O.P.No.28013 of 2023

recorded through the special instructor and the medical examination conducted on the victim also does not disclose any injury at all.

4. Learned counsel for the petitioner further submitted that the petitioner, who is a daily wages/coolie, is suffering incarceration from 16.02.2023 and since the petitioner is in custody for more than 10 months, he is unable to engage a counsel to defend his case. If only, the petitioner is granted bail, he would be able to defend his case in a proper manner. Further, though on the earlier occasion, the petition was withdrawn and liberty was granted to renew the application, after examination of L.W.1 to L.W.3, since the Court is vacant without the Presiding Officer, there is no progress in the trial. He also submitted that the petitioner is ready to stay far away from the jurisdictional limit of the respondent police till the examination of LW1 to LW3 are over and also prepared to abide by any stringent conditions that may be imposed by this Court.

5. Learned Government Advocate (Crl.Side) appearing for the respondent police submitted that it is the case where the petitioner/accused, who is a neighbour of the victim, aged about 19 years, had committed



Crl.O.P.No.28013 of 2023

repetitive sexual assault on the mentally retarded victim. He further submitted that the case has been periodically adjourned due to non availability of the presiding officer in the Court concerned, however, he objected for grant of bail.

6. Heard the learned Counsel for the petitioner and the learned Government Advocate (Crl.Side) for the respondent and perused the materials available on record.

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.8493, 13152 & 21743 of 2023 vide orders dated 25.04.2023, 23.06.2023 and 25.09.2023 respectively. However, the third bail application in Crl.O.P.No.21743 of 2023 was dismissed as withdrawn with a liberty to file a fresh petition after examination of the witnesses PW1 to PW3. Now it is reported that since the presiding officer is not available, the case is being periodically adjourned and the petitioner is in custody from 16.02.2023. Therefore, this Court, taking into consideration the long period of incarceration undergone by the petitioner, is inclined to grant bail to the petitioner with certain conditions.



CrI.O.P.No.28013 of 2023

8. 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 Sessions Judge, Mahila Court, Cuddalore**, 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 appear before the trial Court on all hearing dates, without fail;

[c] the petitioner shall stay at Chennai and report before the Inspector of Police, North Beach Police Station, everyday at 10.30 a.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 respondent police, 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



WEB COPY



CrI.O.P.No.28013 of 2023

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]***;

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

14.12.2023

ham

To

1. The Sessions Judge, Mahila Court,
Cuddalore.
2. The Inspector of Police,
All Women Police Station,
Panruti Taluk, Cuddalore.
3. The Central Prison,
Cuddalore.
4. The Inspector of Police,
North Beach Police Station,
Chennai.
5. The Public Prosecutor,
High Court of Madras.



WEB COPY



Crl.O.P.No.28013 of 2023

A.D.JAGADISH CHANDIRA.,J.

ham

Crl.O.P.No.28013 of 2023

14.12.2023