



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2023

PRESENT

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

CRL.O.P(MD)No.123 of 2023

1.M.Kumaresan
2.K.Sellamuthu
3.S.Sundarampal @ Sundarambal
4.G.Murugesan
5.M.Selvalakshmi

...Petitioners / Accused Rank 1 to 5

-vs-

The State represented by
The Inspector of Police,
Tenkarai Police Station,
Theni District.
(Cr.No.486 of 2022)

...Respondent / Complainant

PRAYER: Criminal Original Petition filed under Section 438 of Cr.P.C, praying to enlarge the petitioners on bail in the event of their arrest in connection with Cr.No.486 of 2022 on the file of the respondent Police.

For Petitioners : Mr.K.Dinesh, Advocate.

For Respondent : Mr.A.Albert James
Government Advocate (Crl.side)

O R D E R

The petitioners, who apprehend arrest at the hands of the respondent Police for the offences punishable under Sections 9, 10 and 11 of Prohibition of Child Marriage Act and Sections 5(1), 6 and 17 of POCSO Act in Crime No.486 of 2022 on the file of the respondent Police, seek anticipatory bail.

2.The case of the prosecution, as per the de-facto complainant, is that the accused performed child marriage of the victim girl aged 17 years with A1 and pursuant to which, both the victim girl and A1 lived as husband and wife and A1 had committed repeated penetrative sexual assault and hence, the case.



3.The learned Counsel for the petitioners would submit that the petitioners are innocents and a false complaint has been given. He would further submit that the petitioners and the victim girl are close relatives. The first accused and the victim girl were having a love affair for three years. The family members coming to know about the same, had performed the marriage between the first accused and the victim without understanding the consequence of POCSO Act and the Prohibition of Child Marriage Act. He would further submit that the victim was born on 14.07.2005 and the victim has completed 17 years and he would submit that the family members have agreed to conduct a legal marriage after the victim had attained the marriageable age. He would also submit that a statement has also been recorded from the victim girl under Section 164 Cr.P.C., wherein, she has also admitted about the love affair with the first accused for three years and the marriage was performed with her consent.

4.The learned Government Advocate (crl.side) would submit that the petitioners have performed child marriage of the victim girl who aged 17 years with the first accused and that the first accused and the victim were living as husband and wife and the first accused had committed penetrative sexual assault on the victim girl. He would also submit that a statement under Section 164 Cr.P.C., has also been recorded from the victim minor girl.

5.Heard the learned Counsel. Taking into consideration the facts and submissions and also on perusing the materials available on record including the F.I.R. and also the statement under Section 164 Cr.P.C., recorded from the victim minor girl, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

6.Accordingly, the petitioners are ordered to be released on bail in the event of arrest or on their appearance, within a period of fifteen days from the date on which the order copy made ready, before the Mahila Court, Theni, on condition that the petitioners shall execute bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[a] the petitioners and 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 petitioners 3 and 5 shall report before the respondent police everyday at 10.30 a.m., for a period of two weeks, thereafter as and when required and the petitioners 1, 2 and 4 shall report



before the respondent police every at 10.30 a.m., for a period of four weeks and thereafter, every Saturday at 10.30 am until further orders.

[c] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioners shall not abscond either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners 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]**.

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

sd/-

05/01/2023

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE JUDGE,
MAHILA COURT, THENI.

2 THE INSPECTOR OF POLICE
TENKARAI POLICE STATION, THENI DISTRICT.

3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.DINESH K, Advocate (SR-313[I] dated 06/01/2023)

ORDER

IN

CRL OP(MD) No.123 of 2023

Date :05/01/2023

cmr

MK/VR/SAR II(20.01.2023) 3P 5C