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CRL OP(MD)



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Date : 06/01/2023

PRESENT

The Hon`ble Mr.Justice A.D.JAGADISH CHANDIRA

CRL OP(MD) . No.363 of 2023

Mahaganapathy

... Petitioner/Accused No.1

Vs

The state rep.by
The Inspector of Police,
All Women Police Station-Rural Palayamkottai,
In Crime No.13 of 2022,
Tirunelveli District.

... Respondent/Complainant

For Petitioner : M/s.Selvakrishnan S,
Advocate.

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

PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

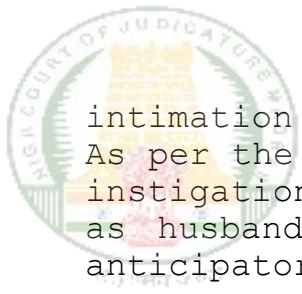
PRAYER :-For Anticipatory Bail in Crime No.13 of 2022 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner/Accused, apprehending arrest at the hands of the respondent police for the alleged offence punishable under Sections 9, 10 of Prohibition of Child Marriage Act, 2006 and Sections 5(1), 5(j)(ii), 6 of POCSO Act, 2012, in Crime No.13 of 2022, on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution as per the defacto complainant is that the accused had kidnapped the victim girl and performed child marriage and committed penetrative sexual assault, due to which, she became pregnant. Hence, the complaint.

3. The learned counsel for the petitioner submitted that the petitioner is innocent. The petitioner and the victim are close relatives and there was a love affair between them. The victim only compelled the petitioner to marry her and threatened him that if he did not marry her , she would commit suicide. Therefore, the petitioner took the victim to a temple and married her. Thereafter, they lived together and the victim got pregnant. Based on the



intimation given from the hospital, this case has been registered. As per the 164 Cr.P.C of the victim, she has stated that only on her instigation, the petitioner had married her and they lived together as husband and wife. Hence, prays to release the petitioner on anticipatory bail.

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4. The learned Government Advocate (Crl.Side) submitted that there was a love affair between the victim and the petitioner and the petitioner had kidnapped her and committed penetrative sexual assault, thereby, she became pregnant. In this case, major part of the investigation has been completed. Considering the gravity of offence, prays to dismiss the petition.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court, including the statement of the victim, recorded under Section 164 of Cr.P.C

6. Taking into consideration the facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

7. Accordingly, this Criminal Original Petition is allowed and the petitioner is ordered to be released on bail in the event of arrest or her appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned **Sessions Judge, Special Court of POCSO Act Cases, Tirunelveli**, on condition that the petitioner shall execute 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 respondent police or the police officer, who intends to arrest or to the satisfaction of the learned Judge concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[a] the petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the Judge may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioner shall report before the respondent Police everyday at 10:30 a.m., for a period of two weeks and thereafter, on every Saturday at 10:30 a.m., until further orders;

[c] the petitioner shall not tamper with the evidence or witness either during investigation or trial;

[d] the petitioner shall not abscond either during investigation or trial;

[e] on breach of any of the aforesaid conditions, the learned Judge/ 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 Judge/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560]**; and;



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[f] if the accused/ petitioner thereafter absconded, a fresh FIR can be registered under Section 229-A IPC.

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

TO

- 1 THE SESSIONS JUDGE,
SPECIAL COURT OF POCSO ACT CASES,
TIRUNELVELI.
- 2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION-RURAL PALAYAMKOTTAI,
TIRUNELVELI DISTRICT.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.363 of 2023
Date :06/01/2023

PNM

MK/MMS/SAR I (20.01.2023) 3P 4C