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CRL OP(MD)



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

Date : 25/01/2023

PRESENT

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

CRL OP(MD). No.579 of 2023

Ajay ... Petitioner/Accused No.2

Vs

The State rep.by,
The Inspector of Police,
Nilakottai Police Station,
Dindigul District.
Crime No. 318/2022.

... Respondent/Complainant

For Petitioner : M/s.Mohan Gandhi.S.M,
Advocate.

For Respondent : Mr.T.Senthilkumar,
Additional Public Prosecutor

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

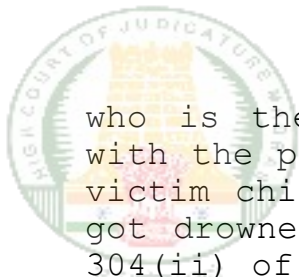
PRAYER :-

For Bail in Crime No. 318 of 2022 on the file of the
respondent Police.

ORDER : The Court made the following order :-

The petitioner/A2, who was arrested and remanded to judicial
custody on 30.11.2022 for the offence punishable under Sections 174
Cr.P.C @ 304(ii) of IPC in Crime No.318 of 2022 on the file of the
respondent police, seeks bail.

2. The case of the prosecution as per the defacto
complainant/Village Administrative Officer of Nakkalathu Village is
that the child aged about 1 ½ years was found dead inside the well.
Based on the complaint given by her a case in Crime No.318 of 2022
came to be registered for the offence under Section 174 of Cr.P.C
and later during investigation it came to light that the 1st accused



who is the mother of the victim had developed illegal relationship with the petitioner and when they were together they have left the victim child unattended due to which the child fell into the well, got drowned and died. Thereafter the case was altered into section 304(ii) of IPC.

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3. The learned counsel appearing for the petitioner would submit that the petitioner is innocent and a false case has been foisted against him. He would further submit that the major allegation is against the mother of the victim who is said to have left the child unattended and the further allegation is that the petitioner was only suspected to have illegal relationship with A1 mother of the victim girl and further the petitioner is in judicial custody from 30.11.2022 hence he seeks bail.

4. The learned Additional Public Prosecutor appearing for the respondent would submit that on 26.11.2022 at early morning at 12.20 the mother of the deceased found that her infant daughter was found missing and immediately they searched everywhere and finally at 6.00a.m., they found the body of the child in a well and on enquiry it was found that the A2 had illegal intercourse with A1 and due to their act of carelessness the child fell into well and died, hence he objected to grant bail to the petitioner.

5. Heard. Perused the materials available on record including the First Information Report and the post mortem report. Further in the post mortem report the doctor had opined that the deceased would have died of asphyxia due to drowning.

6. Taking into consideration of the facts and submissions made by the learned counsels and also taking into consideration the period of incarceration and also the post mortem report, this court is inclined to grant bail to the petitioner, subject to the following conditions:

[a] Accordingly, the petitioner is ordered to be released on bail on condition to 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 learned Judicial Magistrate, Nilakottai, and on further conditions that:

[b] 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.

[c] the petitioner shall report before the respondent police daily at 10.30 A.M., until further orders.

[d] the petitioner shall not commit any offences of similar nature.



[e] the petitioner shall not abscond either during investigation or trial.

[f] the petitioner shall not tamper with evidence or witness either during investigation or trial.

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[g] On breach of any of the aforesaid conditions, the learned Judicial 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].

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

sd/-

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25/01/2023

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

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TO

- 1.THE JUDICIAL MAGISTRATE, NILAKOTTAI.
- 2.DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
DINDIGUL
- 3.THE OFFICER IN CHARGE,
SUB JAIL, DINDIGUL.
- 4 THE INSPECTOR OF POLICE,
NILAKOTTAI POLICE STATION,
DINDIGUL DISTRICT.
- 5 ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.S.M.MOHANGANDHI, Advocate (SR-1149[I] dated
25/01/2023)

ORDER

IN

CRL OP(MD) No.579 of 2023

Date :25/01/2023