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CRL OP(MD)



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 20/01/2023

PRESENT

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

CRL OP(MD). No.930 of 2023

Bala @ Balasubramaniyan

... Petitioner/2nd Accused

Vs

State Rep.by

The Inspector of Police,
All Women Police Station,
Thirumayam.

(In Crime No.9/2022).

... Respondent/Complainant

For Petitioner : M/s.Ganapathi Subramanian P,
Advocate.

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

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

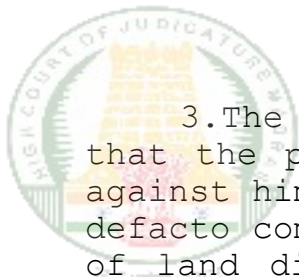
PRAYER :-

For Bail in Crime No.9/2022 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 19.12.2022 for the offences punishable under Sections 294 (b), 323, 341, 506(ii) and 509 of IPC and Sections 7, 8, 9(1), 10 and 15 (1) of POCSCO Act,2012 and Section 67B(a) of Information Technology (Amendment) Act, 2008 in Crime No.9 of 2022 on the file of the respondent police, seeks bail.

2.The case of the prosecution, as per the de-facto complainant, Vithya, is that A1 and A2 had sexually exploited and assaulted her minor daughter for the past one year and they have also taken videos and uploaded it in the facebook and when the de-facto complainant and her family members have questioned the same, the accused 3 to 8, who are relatives of A2, have abused the de-facto complainant and her family members in filthy language and also intimidated them. Hence, the complaint.



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 the petitioner's family and the defacto complainant family belong to the same village and on account of land dispute there are case and counter cases pending against them. On the complaint given by the petitioners' side, cases in Cr.Nos.148 and 160 of 2022 are registered against the de-facto complainant and her family members and on the counter complaint given by the de-facto complainant, cases in Cr.Nos.147 and 159 of 2022 are registered against the petitioners' side. He would submit that in none of the earlier complaint, there is no mention about the accused having exploited and sexually assaulted the minor victim, whereas, in order to wreck vengeance, a false complaint has been given through the victim girl. He would further submit that even as per the prosecution the allegation are only against A1 who was the friend of victim. He would further submit that though the victim has stated that the petitioner was also present along with A1 at the time of occurrence there is no material available to substantiate the same. He would further submit that even as per the prosecution A1 is person who has uploaded the photos in the facebook and even in the photos the petitioner was not present. He would further submit that there is no allegation of sexual assault by the petitioner on the victim girl. He would also submit that the petitioner is in judicial custody from 19.12.2022 and he is ready to abide by any stringent condition that may be imposed by this Court, hence he seeks bail.

4.The learned Additional Public Prosecutor appearing for the respondent would submit that A1 and A2 have misbehaved and sexually assaulted the victim minor girl, who aged about 16 years and they have also taken video of the incident and have uploaded it in the facebook. However, he would submit that A1 was arrested and enlarged on bail. He would admit that there are cases and counter cases pending between the petitioners family and the de-facto complainant's family. He would also submit that two previous cases are pending against the petitioner under Section 506(ii) of IPC. He would further submit that some of the co-accused persons have been granted anticipatory bail by this Court on 19.12.2022 in Crl.O.P(MD) No.21415 of 2022.

5.Heard. Perused the materials available on record including the First Information Report and the statement of the victim recorded under Section 164 of Cr.P.C.

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 fact that some of the co-accused persons have been granted anticipatory bail by this Court 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 Sessions Judge, Mahila Court, Pudukottai, 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 stay at Chennai and report before the North Beach Police Station daily at 10.30a.m., and 5.30 pm., 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.

[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/-

20/01/2023

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20/01/2023

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

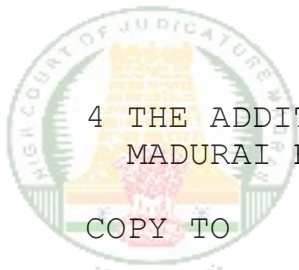
AAV

TO

1 THE SESSIONS JUDGE, MAHILA COURT, PUDUKOTTAI.

2 THE OFFICER INCHARGE, DISTRICT PRISON, PUDUKKOTTAI.

3 THE INSPECTOR OF POLICE, ALL WOMEN POLICE STATION, THIRUMAYAM.



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

COPY TO

THE INSPECTOR OF POLICE,
NORTH BEACH POLICE STATION,
CHENNAI.

ORDER

IN

CRL OP(MD) No.930 of 2023

Date :20/01/2023

RS/VR/SAR.(20.01.2023) 4P-6C