



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2023

PRESENT

THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**CRL.O.P(MD)No.1832 of 2023

WEB COPY

Kuttyselvan @ Kuttiselvam

...Petitioner/ Sole Accused

-vs-

The State represented by
The Inspector of Police,
All Women Police Station, Andipatti,
Theni District.
(in Cr.No.28 of 2022)

...Respondent/ Complainant

PRAYER: Criminal Original Petition filed under Section 438 of Cr.P.C, praying to enlarge the petitioner on bail in the event of his arrest by the respondent Police with respect to Cr.No.28 of 2022.

For Petitioner
For Respondent

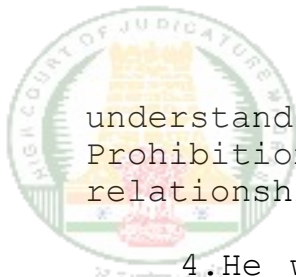
: Mr.P.Senguttuarasan
: Mr.A.Albert James
Government Advocate (Crl.side)

O R D E R

The petitioner, who apprehends arrest at the hands of the respondent Police for the offences punishable under Section 9 of Prohibition of Child Marriage Act, 2006 and Sections 5(I), (j), (II) r/w 6(1) of POCSO Act, in Crime No.28 of 2022 on the file of the respondent Police, seeks anticipatory bail.

2.The case of the prosecution, as per the de-facto complainant, is that her minor daughter was studying 11th standard and she was in love affair with one Kuttiselvam and she went along with him and that the Child Welfare Committee had enquired them and handed over her daughter to her. Later, it was found that her daughter was pregnant by six months and when she had enquired her daughter, her daughter informed that she was in love with Kuttiselvam for the past three years and they had sexual intercourse, due to which she became pregnant. Hence, the complaint.

3.The learned Counsel for the petitioner would submit that the petitioner is an innocent and a false complaint has been given. He would also submit that the petitioner has not committed any offence, as alleged by the prosecution. He would submit that there was a love affair between the petitioner and victim girl for the past three years and that the petitioner and the victim girl, without



understanding the consequence and rigors of the POCSO and Prohibition of Child Marriage Act, have been in physical relationship, due to which, the victim became pregnant.

4.He would further submit that in the statement of the victim under Section 164 Cr.P.C., the victim girl has stated that the relationship was consensual in nature and she has voluntarily gone along with the petitioner and the marriage was also with her consent and that she and the petitioner living as husband and wife. He would also submit that if the petitioner is arrested, it will cause great prejudice to the petitioner as well as the victim girl. The petitioner undertakes that he would marry the victim, when she attains marriageable age and hence, he seeks anticipatory bail.

5.The learned Government Advocate (Crl.side) would submit that the petitioner and the victim girl was in love affair for the past three years and performed child marriage and committed penetrative sexual assault on the victim girl, due to which, the victim became pregnant and she also delivered a male child. He would oppose for grant of anticipatory bail to the petitioner.

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

7.Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date on which the order copy made ready, before the Mahila Court, Theni, Theni District, 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 Magistrate 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 Magistrate 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, every Saturday at 10.30 am until further orders.

[c] the petitioner shall not tamper with 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 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 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.

WEB COPY

sd/-

31/01/2023

/ TRUE COPY /

/02/2023

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

cmr

To

1.The Mahila Court, Theni, Theni District.

2.The Inspector of Police,
All Women Police Station, Andipatti,
Theni District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.SENGUTTUARASAN, Advocate (SR-1616[I] dated
02/02/2023)

ORDER

IN

CRL OP(MD) No.1832 of 2023

Date :31/01/2023

RD/SAR-II(03/02/2023) 3P 5C