



WEB COPY

CRL OP(MD).



23

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 08/02/2023

PRESENT

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

CRL OP(MD) . No.2197 of 2023

M.Shoban Babu

... Petitioner/Sole Accused

Vs

State Rep.by
The Inspector of Police,
All Women Police Station,
Colachel, Kanyakumari District.
Crime No.42 of 2022..

... Respondent/Complainant

For Petitioner : M/s.Sankar.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.42 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 5(1) and 6 of POCSO Act, 2012, in Crime No.42 of 2022, on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution as per the defacto complainant XXX, 17 years and above is that she was in a love affair with the accused from the year 2019 and that on 25.12.2021 when defacto complainant was alone at her home, the accused came to her house and had a sexual affair with her and thereafter, on several days he had a sexual affair with the victim, thereby she became pregnant. Hence the complaint.



3. The learned counsel for the petitioner submit at the petitioner is innocent. The petitioner and the victim are close relatives and there was love affair between them. Without knowing the consequences and rigors of POCSO Act, they had consensual physical relationship, thereby, the victim became pregnant. Later, the pregnancy was aborted. He agree to marry the victim, after she attains majority. In the 164 Cr.P.C statement, the victim has not made any allegation as against the petitioner. Hence, prays to release the petitioner on anticipatory bail.

4. The learned Government Advocate (Crl.Side) submitted that though there was love affair between the victim and the petitioner and he is the close relative of the victim, he had committed penetrative sexual assault, thereby, the victim became pregnant. Considering the gravity of the 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.

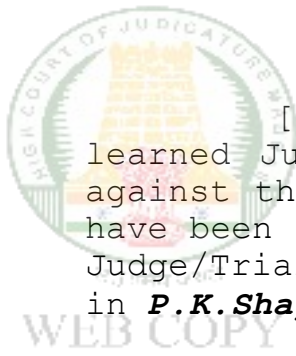
7. Accordingly, this Criminal Original Petition is allowed and the petitioner is ordered to be released on bail in the event of arrest or her appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned **Judicial Magistrate No.II, Nagercoil**, on condition 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., 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;

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

sd/-

08/02/2023

/ TRUE COPY /

/02/2023

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

PNM

TO

- 1 THE JUDICIAL MAGISTRATE NO.II
NAGERCOIL.
- 2 DO THROUGH:
THE CHIEF JUDICIAL MAGISTRATE,
KANYAKUMARI DISTRICT @ NAGERCOIL
- 3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
COLACHEL,
KANYAKUMARI DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.S.SANKAR, Advocate (SR-2006[I] dated 08/02/2023)

ORDER

IN

CRL OP(MD) No.2197 of 2023

Date :08/02/2023

PKP/BUC/SAR-2/16.02.2023/3P/6C