



WEB COPY

CRL OP(MD).



23

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

Date : 20/02/2023

PRESENT

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

CRL OP(MD) . No.2355 of 2023

P.Pandi, ... Petitioner/Accused

Vs

THE STATE REP.BY,  
The Inspector of Police,  
All Women Police Station, Melur,  
Madurai District.  
(Crime No.28/2022)..

... Respondent/Complainant

For Petitioner : M/s.Santhakumaresan V,  
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.28/2022 on the file of the Respondent Police.

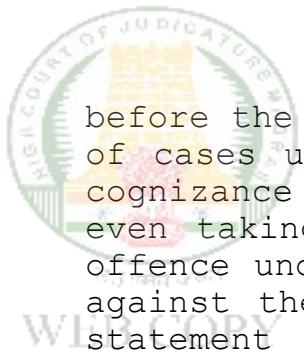
ORDER : The Court made the following order :-

The petitioner /accused who was arrested and remanded to judicial custody on 14.11.2022 for the offences under sections 5 (m),6 of POCSO Act in crime No.28 of 2022 on the file of the respondent police seeks bail.

2. The case of the prosecution is that the petitioner committed sexual assault upon the minor daughter of the defacto complainant by using his fingers in the private part, hence the case.

3. The learned counsel appearing for the petitioner would submit that the petitioner is innocent and due to previous enmity a false complaint has been given. He would further submit that the investigation has been completed and final report has been filed

<https://www.mca.gov.in>



before the learned Sessions Judge, Special Court for Exclus. al of cases under the POCSO Act, Madurai and the same has been taken cognizance in Spl. S.C. No.1 of 2023. He would further submit that even taking into consideration the entire evidence on record the offence under Section 5(m) and 6 of POCSO Act cannot be made out as against the petitioner. He would further submit that even in the statement recorded under section 164 of Cr.P.C the defacto complainant who is the mother of the victim is the hearsay witness and she has stated that her daughter her informed that the petitioner had removed her underwear and touched the private part and pinched her on the thigh. He would further submit that the victim has also stated the petitioner had removed her underwear and put his hand inside and that when the victim raised alarm and when her mother came the accused ran away. He would further submit that the medical evidence does not support the case of prosecution as there was no penetrative sexual assault. He would further submit that as per the medical report and the statement recorded from the medical witness Dr.Kalamani she had replied to the questionnaire 4 and 5 that there was no injury in the private part or swell up injury and there is no material to show that there was penetrative sexual assault. He would further submit that the petitioner is aged about 60years and he has to engage an advocate to defend his case. He would further submit that the petitioner is in judicial custody from 14.11.2022 , hence he seeks bail.

4. The learned Additional Public Prosecutor appearing for the respondent would submit that the petitioner had removed the underwear of the minor victim and had inserted his fingers in the private part of the minor victim girl, hence he objected to grant bail to the petitioner. He would further submit that the investigation has been completed and final report has been filed before the learned Sessions Judge, Special Court for Exclusive trial of cases under the POCSO Act, Madurai and the same has been taken cognizance in Spl. S.C. No.1 of 2023 and stands posted to 22.02.2023 for appearance of the accused.

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

6. Taking into consideration of the facts and submissions made by the learned counsels and also the period of incarceration, 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, Principal Special Court



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.

WEB COPY [c] the petitioner shall report before the learned Sessions Judge, Principal Special Court for Exclusive trial of cases under POCSO Act, Madurai 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.

[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/-

20/02/2023

/ TRUE COPY /

20/02/2023

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

AAV  
TO

1. The Sessions Judge,  
Principal Special Court for Exclusive trial  
of cases under POCSO Act, Madurai

2. The Superintendent, Central Prison, Madurai.



3. The Inspector of Police,  
All Women Police Station, Melur,  
Madurai District.

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

+1. CC to M/S.SANTHAKUMARESAN V Advocate SR.No.2560(I)

ORDER  
IN  
CRL OP(MD) No.2355 of 2023  
Date : 20/02/2023

NA/BUC/SAR-III (20/02/2023) 4P/6C