



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2023

PRESENT

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

WEB COPY

CRL.O.P(MD)No.2531 of 2023

Muthu Eswaran

...Petitioner/Sole Accused

-vs-

State represented by
The Inspector of Police,
All Women Police Station,
Manamadurai,
Sivagangai District.
(in Cr.No.23 of 2022)

...Respondent/Complainant

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

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. 23 of 2022.

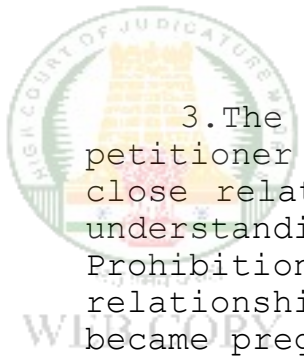
For Petitioner : Mr.A.Vadivel

For Respondent : 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 Sections 5(1), n, j(ii) r/w 6 of POCSO Act and Section 9 of Prohibition of Child Marriage Act, 2006 in Crime No.23 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 based on intimation from Madurai Rajaji Hospital that a minor aged 15 years was admitted for delivery and the respondent obtained a statement from the victim girl wherein she has stated that she was having love affair with the accused Muthueaswaran and since it was objected to by the family members they got married and they are living separately and the accused had committed sexual intercourse with her due to which she became pregnant and delivered a child. Hence, the complaint.



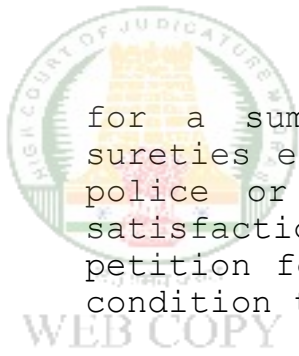
3.The learned Counsel for the petitioner would submit the petitioner is an innocent and the petitioner and the victim girl are close relatives and there was love affair between them and without understanding the rigors and consequences of the POCSO Act and the Prohibition of Child Marriage Act, the petitioner had consensual relationship with the victim girl resulting in the victim girl became pregnant and later after getting approval from both families, they got married and they are living together and now, the victim has delivered a child. He would submit that since the petitioner hails from lower status of society, he is unaware of the stringent provisions of the POCSO Act. He would further submit that the victim girl and the child are being taken care of her parents and both families agreed to perform marriage between the petitioner and the victim girl after the victim girl attains the approved age of marriage and a statement has been recorded from the victim girl under Section 164 Cr.P.C wherein she has admitted that there was love affair between her and the petitioner and the relationship was consensual in nature. He would also submit that this is second application for anticipatory bail and the earlier application was dismissed on the ground that investigation was at the initial state and that the statement has not been recorded from the victim girl under Section 164 Cr.P.C. He would pray for grant of anticipatory bail to the petitioner.

4.The learned Government Advocate (Crl.side) would submit that the petitioner is the close relative of the victim girl and the petitioner had sexual intercourse with her due to which the victim girl became pregnant and also delivered a child. He would further submit that the petitioner may be directed to file an affidavit before the Judge that he is the father of the child and he may be directed to furnish samples for taking DNA test, if required by the respondent police.

5. The learned counsel for the petitioner would submit that the petitioner does not disown the child and he is ready to file an affidavit before the Judge that he is the father of the child and he is also ready to furnish samples for taking DNA test if required by the respondent police.

6. Heard and perused the materials available on record including the statement recorded under Section 164 Cr.P.C. Taking into consideration the facts and circumstances of the case and on perusing the 164 Cr.P.C. statements of the victim girl, 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 Special Judge (Special Court of POCSO Act Cases) on condition that the petitioner shall execute a bond



for a sum of Rs.10,000/- (Rupees Ten Thousand only) 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., for a period of two weeks and thereafter, every Saturday at 10.30 am until further orders and in the event of the respondent requires DNA samples, the petitioner shall co-operate for the same.

[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 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]**.

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

sd/-

08/02/2023

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/02/2023

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

CM
TO

1 THE SPECIAL JUDGE,
SPECIAL COURT OF POCSO ACT CASES)
SIVAGANGAI.



CRL.O.P(MD)



23

2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, MANAMADURAI,
SIVAGANGAI DISTRICT.

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

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+1 CC to M/s.A.VADIVEL, Advocate (SR-1982[I] dated 08/02/2023)

ORDER

IN

CRL OP(MD) No.2531 of 2023

Date :08/02/2023

PKP/BUC/SAR-3/21.02.2023/4P/5C