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CRL OP(MD).



23

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 09/02/2023

PRESENT

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

CRL OP(MD) . No.2611 of 2023

Shanmugapriya

... Petitioner/Accused-5

Vs

State Rep.by
The Inspector of Police,
All Women Police Station,
Lalgudi,Trichy
(Crime No.40 of 2022).

... Respondent/Complainant

For Petitioner : M/s.Udhayakumar.M,
Advocate.

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

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

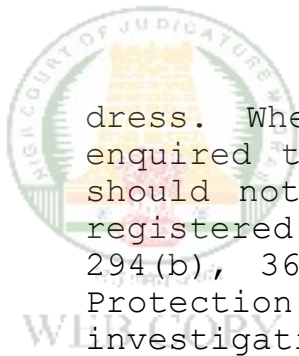
PRAYER :-

For Bail in Crime No.40 of 2022 on the file of the respondent police

ORDER : The Court made the following order :-

The petitioner/A5, who was arrested and remanded to judicial custody on 07.01.2023 for the offence punishable under Sections 294 (b), 361,370,506(i) of IPC and 81 of Juvenile Justice(Care and Protection of Children) Act 2015 @ 370,365,346,109,120(b),193 of IPC r/w.81 and 87 of Juvenile Justice (care and protection of Children) Act,2015 in Crime No.40 of 2022 on the file of the respondent police, seeks bail.

2. The case of the prosecution as per the defacto complainant is that she is unmarried and delivered a female child on 17.09.2022 and the birth of the child was not known to her relatives and the persons in the village. Whiles0, she was discharged on 22.09.2022 by one Advocate Prabhu and his wife Shanmugavalli who are known to her brother and they stayed in the house of the said Prabhu and thereafter she along with her mother after leaving the child in the Advocate Prabhu's house had gone to their village to take their

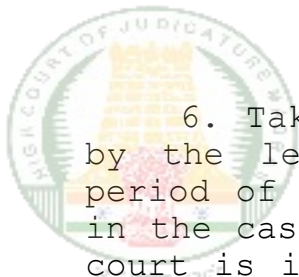


dress. When she came back the child was missing and she enquired the said Prabhu he had threatened her stating that she should not ask for the child. Based on that complaint a case was registered in Crime No. 40 of 2022 for the offences under Sections 294(b), 361, 370, 506(i) of IPC and 81 of Juvenile Justice (Care and Protection of Children) Act 2015. Later during the course of investigation it came to light that the defacto complainant along with Advocate Prabhu and his wife Shanmugavalli had illegally sold the child to one Gopinath who was working in an infertility centre in Delhi and later the child was changed from hands to hands and a fabricated birth certificate was made ready at Delhi and later the child had been handed over to a childless couple at Karnataka. Later the child has been recovered from Karnataka.

3. The learned counsel appearing for the petitioner would submit that the petitioner is innocent and she has been unnecessarily implicated in this case. He would further submit that the petitioner is a poor lady eking her life by egg donation and being a surrogate mother and she got touch with one Gopinath who works in an infertility centre and through Prabhu the petitioner was asked to take the child to Chennai only to hand over to some body. The petitioner had innocently carried the child to Chennai and other than that the petitioner has nothing to do with the alleged offence. He would further submit that the petitioner is in custody from 07.01.2023. He would further submit that police custody of the petitioner was taken for two days and she has also cooperated with the respondent in the investigation. He would further submit that the further custody of the petitioner may not be required and the petitioner is ready to abide by any stringent conditions that may be imposed on her and she is also ready to cooperate for the further investigation hence he seeks bail.

4. The learned Additional Public Prosecutor appearing for the respondent would submit that the petitioner is an agent dealing with adoption and surrogacy. The petitioner is the person who has introduced the accused Prabhu to Gopinath and she has acted as an agent and the child was handed over to one Gopinath. Apart from this the petitioner has assisted the Gopinath in taking the child till Chennai in a car. Later the child was handed over to one Jeyashri and through Jeyashri the child has been taken to Bangalore and from there the child has been taken to Bellavi and thereafter the records have been fabricated as if the child was born in Delhi. He would further submit that the investigation is pending, hence he opposed to grant bail to the petitioner. However he would further submit that police custody of the petitioner had been taken and she has also cooperated during enquiry.

5. Heard. Perused the materials available on record including the First Information Report.



6. Taking into consideration of the facts and submissions by the learned counsels and also taking into consideration the period of incarceration and also the role played by the petitioner in the case and that she had cooperated with the investigation 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.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Lalgudi 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 report before the respondent police 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/-

09/02/2023

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09/02/2023

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



TO

1 THE JUDICIAL MAGISTRATE, LALGUDI.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, TRICHY DISTRICT.

3 THE OFFICER INCHARGE, SUB JAIL FOR WOMEN, TRICHY.

4 THE INSPECTOR OF POLICE, ALL WOMEN POLICE STATION, LALGUDI, TRICHY.

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

+2 CC to M/s.M.UDHAYAKUMAR, Advocate (SR-2049[I] dated 09/02/2023)

ORDER

IN

CRL OP(MD) No.2611 of 2023

Date :09/02/2023

RS/VR/SAR.(09.02.2023) 4P-8C