



WEB COPY

CRL.O.P(MD)



23

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2023

PRESENT

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

CRL.O.P(MD)No.2936 of 2023

Mohan

...Petitioner/Petitioner
/Petitioner/Sole Accused

-vs-

The State represented by
The Inspector of Police,
Thiruppathur All Women Police Station,
Sivagangai District.
(in Cr.No.16 of 2022)

...Respondent/Respondent
/Respondent/ Complainant

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

PRAYER :-

To Grant bail to the petitioner in SPL.S.C.No.1 of 2023 on the file of the Learned the Court of the Sessions Judge, Principal Special Court for Exclusive Trial of Cases under the POCSO Act, 2012, Sivagangai.

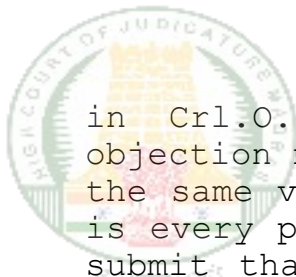
For Petitioner : Mr.Gopala Krishna Laxmana Raju ,
Senior Counsel
for Mr.P.Aju Tagore, Advocate
For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

O R D E R

The petitioner, who was arrested and remanded to judicial custody on 25.10.2022 for the offences punishable under Sections 9 (m) r/w 10: u/s 7 r/w Section 8 of POCSO Act, 2012 in Crime No.16 of 2022 on the file of the respondent police, seeks bail.

2.The case of the prosecution, as per the de-facto complainant, is that when the victim girls gone to the shop of the petitioner to purchase things, the petitioner has sexually assaulted them and hence, the case.

3.The learned Senior Counsel appearing for the petitioner would submit that the petitioner is an innocent and a false complaint has been given. He would further submit that this is the third petition for bail. He would also submit that the earlier petition for bail



in Crl.O.P(MD)No.23266 of 2022 was dismissed in view of the objection made by the prosecution that one of the victims belongs to the same village and that if the accused is released on bail, there is every possibility of threatening the victim girl. He would also submit that the second petition for bail in Crl.OP.P(MD)No.560 of 2023 was dismissed on the ground that trial has not commenced. He would further submit that now the case has been taken up in S.S.C.No.1 of 2023 and both the victims have been examined and he would submit that without prejudice to his defence before the trial Court, taking into consideration the evidence of the victims, it is not a case of penetrative sexual assault and it could be only a case of sexual assault, which involves physical contact without penetration and the petitioner is in custody from 25.10.2022 and the main witnesses/victims have been examined. He would also submit that the petitioner has to let in evidence on the side of the defence. Hence, he would seek for bail to the petitioner.

4.The learned Additional Public Prosecutor would submit that the petitioner is running a petty shop and when the victim girls have gone to that shop to purchase things, the petitioner has misbehaved with them by touching their private parts. He would also submit that the evidence of the main witnesses/victims have been recorded.

5.Heard and perused the material available on record including the deposition of victim girls.

6.Taking into consideration of the facts and submissions made by the learned Counsels and that the petitioner is in judicial custody from 25.10.2022, 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 for Exclusive Trial of Cases under the POCSO Act, 2012, Sivagangai, and on further conditions that:

(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) the petitioner shall stay at Sivagangai and and shall appear before the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under the POCSO Act, 2012, Sivagangai on all hearing dates. It is made clear that the petitioner shall not enter into the jurisdictional limits of respondent Police.



(d) the petitioner shall not commit any offences of 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 petitioners 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 abscond, a fresh FIR can be registered under Section 229A IPC.

sd/-
22/02/2023

/ TRUE COPY /

22/02/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CMR
TO

- 1 THE SESSIONS JUDGE,
PRINCIPAL SPECIAL COURT FOR EXCLUSIVE
TRIAL OF CASES UNDER THE POCSO ACT, 2012,
SIVAGANGAI.
- 2 THE INSPECTOR OF POLICE
THIRUPPATHUR ALL WOMEN POLICE STATION,
SIVAGANGAI DISTRICT.
- 3 THE OFFICER INCHARGE
SUB JAIL, RAMANATHAPURAM.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.P.AJU TAGORE, Advocate (SR-2709[I] dated 22/02/2023)

ORDER
IN
CRL OP(MD) No.2936 of 2023
Date :22/02/2023