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CRL OP(MD).



23

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

Date : 22/02/2023

PRESENT

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

CRL OP(MD) . No.2968 of 2023

Esakkiraja

... Petitioner/Accused No.1

Vs

State rep. by,
The Inspector of Police,
AWPS,
Ambasamudram,
Tirunelveli.
(Crime No.10/2022).

... Respondent/Complainant

For Petitioner : V.Karthick Raja

For Respondent : Mr.A.Albert James,
Government Advocate (Crl.Side)

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

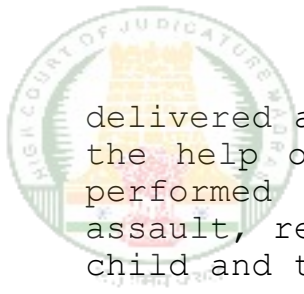
PRAYER :-

For Anticipatory Bail in Crime No.10/2022 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
Section 9 of Child Marriage Act and Sections 5(1),(j)(ii) and 6 of
POCSO Act, 2012, in Crime No.10 of 2022, on the file of the
respondent police, seeks anticipatory bail.

2. The case of the prosecution as per the defacto
complainant viz., Sundarambal, Rural Welfare Officer is that she
received an information on 06.10.2022 from Government Hospital,
Ambasamudram that a minor victim girl, aged about 16 years had



delivered a child on 06.10.2022. On enquiry, it was found that with the help of other accused persons, A1, who is related to her had performed child marriage with her and had penetrative sexual assault, resulting which, the victim became pregnant and delivered a child and the same died due to ill health. Hence, the complaint.

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3. The learned counsel for the petitioner submitted that the petitioner is innocent. The petitioner and the victim are close relatives and there was love affair between them. The victim's father is a deaf and dumb man and victim's mother is working as menial staff and coming to know about the love affair, they had performed marriage, without understanding the rigors of Child Marriage Act and thereafter, without knowing the consequences and rigors of POCSO Act, they had consensual physical relationship. Later, the victim became pregnant and delivered a child and due to ill-health, the child died on the same day. In the 164 Cr.P.C statement, the victim has stated that the said marriage was performed with her consent. 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 the petitioner is the close relative of the victim, he had committed penetrative sexual assault, thereby, the victim became pregnant and delivered a child. 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 and considering the statement of the victim under Section 164 of Cr.P.C, 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 **Sessions Judge, Principal Special Court for Trial of Cases under POCSO Act, Tirunelveli**, 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 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/-
22/02/2023

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/03/2023

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

PNM

TO

1. The Sessions Judge,
Principal Special Court for Trial of Cases under POCSO Act,
Tirunelveli.

2. The Inspector of Police,
AWPS, Ambasamudram, Tirunelveli.

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

+1 CC to M/s.N.VIGNESH, Advocate (SR-2760[I] dated 23/02/2023)

ORDER
IN
CRL OP(MD) No.2968 of 2023
Date : 22/02/2023