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

Date : 27/02/2023

PRESENT

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

CRL OP(MD) . No.3711 of 2023

A.Velusamy

... Petitioner/3rd Accused

Vs

The Inspector of Police,
All Women Police Station, Andipatti,
Theni District (Crime No.26 of 2022).

... Respondent/Complainant

For Petitioner : M/s.Senguttuarasan.S

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.26 of 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 Prohibition of Child Marriage Act and Sections 5(1), (j) (ii) r/w 6(1) of POCSO Act, 2012, in Crime No.28 of 2022, on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution as per the defacto complainant is that her husband/A3 had performed child marriage of her minor daughter with one Kalisamy. The said Kalisamy has committed penetrative sexual assault, due to which, the victim became pregnant and delivered a child. Later, the said Kalisamy also deserted the victim. Hence, the complaint.



3. The learned counsel for the petitioner submitted that the petitioner is innocent. The petitioner is the father of the victim. The marriage of the victim was performed without the knowledge of the petitioner and his wife, since during the relevant period of time, the petitioner was working at Kerala. Since the said Kalisamy deserted the victim, the alleged complaint was given only against the said Kalisamy and on enquiry, the respondent Police has filed an alteration report and the petitioner was also arrayed as A3 in this case. In the 164 Cr.P.C statement, the victim has not made any allegation as against the petitioner. Hence, prays to release the petitioner on anticipatory bail.

4. The learned Government Advocate (Crl.Side) submitted that the petitioner is the father of the victim. He had abetted the child marriage of the victim and the Kalisamy, who had committed penetrative sexual assault, thereby, the victim had delivered a child. Thereafter, the said Kalisamy deserted the victim and gone away with another woman. 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 averments in the statement of the victim, recorded under Section 164 of Cr.P.C and the relationship of the petitioner with the victim, 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, Mahila Court, Theni**, 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 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, as and when required for interrogation;

[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/-

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

TO

1 THE SESSIONS JUDGE, MAHILA COURT, THENI.

2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, ANDIPATTI, THENI
DISTRICT (CRIME NO.26 OF 2022)

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

+1. CC to M/S.SENGUTTUARASAN.S Advocate SR.No.3078

ORDER

IN

CRL OP(MD) No.3711 of 2023

Date :27/02/2023

MGJ/SAR I/07/03/2023/3P/5C