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CRL.O.P(MD)



23

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2023

PRESENT

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

CRL.O.P(MD)No.4171 of 2023

Kalichamy

...Petitioner/Accused No.1

-vs-

The State represented by
The Inspector of Police,
All Women Police Station, Aunditpatti,
Theni District.
(in Cr.No.26 of 2022)

...Respondent/Complainant

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

PRAYER :-

For Bail in Crime No.26 of 2022 on the file of the Respondent Police.

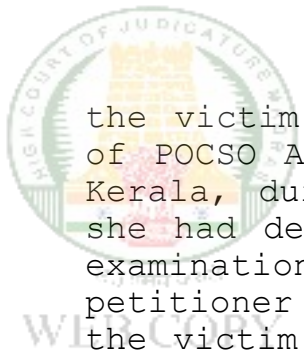
For Petitioner : Mr.R.Shankar Ganesh,Advocate
For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

O R D E R

The petitioner, who was arrested and remanded to judicial custody on 16.02.2023 for the offences punishable under Sections 5 (i), 5(j)(ii) r/w 6(1) of POCSO Act, 2012 and Section 9 of Prohibition of Child Marriage Act in Crime No.26 of 2022 on the file of the respondent police, seeks bail.

2.The case of the prosecution, as per the de-facto complainant, Velusamy, is that his relative Kalichamy had kidnapped her daughter and had married in a temple and had committed repetitive penetrative sexual assault on her due to which, her minor daughter had become pregnant. Hence, the case.

3.The learned 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 the petitioner and the de-facto complainant are close relatives. There was a love affair between the de-facto complainant's daughter, who is 16 years old and it was objected to by the de-facto complainant and that the petitioner and



the victim girl, without understanding the consequences as per provisions of POCSO Act, had eloped from the house and had lived together at Kerala, during which time, the victim had become pregnant and now she had delivered a child. He would also submit that the medical examination in respect of the petitioner has been completed and the petitioner understands that a statement has also been recorded from the victim girl under Section 164 Cr.P.C., wherein, she has stated that there are consensual relationship between her and the petitioner. He would also submit that the petitioner will cooperate with the respondent Police for DNA test. Hence, he would seek for bail to the petitioner.

4.The learned Additional Public Prosecutor appearing for the respondent would submit that the petitioner had kidnapped the de-facto complainant's minor daughter and had committed repetitive penetrative sexual assault and due to which, she became pregnant and delivered a child. He would also submit that the medical examination of the petitioner and victim have been completed and a statement has also been recorded from the victim girl under Section 164 Cr.P.C. He would object for grant of bail to the petitioner.

5.Heard. Perused the materials available on record.

6.Taking into consideration of the facts and submissions made by the learned Counsels and that the petitioner is in judicial custody from 16.02.2023 and the perusing the statement recorded from the victim girl under Section 164 Cr.P.C., 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, Mahalir Neethimandram, Fast Track Mahila Court, Theni, and on further conditions that:

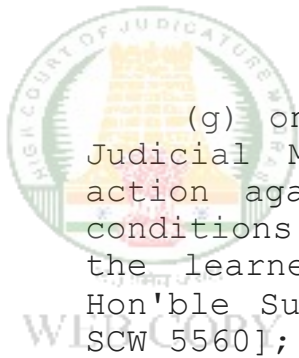
(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) the petitioner shall report before the respondent police daily at 10.30 a.m., until further orders and shall cooperate with the respondent Police for DNA test.

(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 or influence the investigation or trial;



(g) on breach of any of the aforesaid conditions, the 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/-
03/03/2023

/ TRUE COPY /

03/03/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CMR
TO

- 1 THE SESSIONS JUDGE,
MAHALIR NEETHIMANDRAM,
FAST TRACK MAHILA COURT, THENI.
- 2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
AUNDIPATTI, THENI DISTRICT.
- 3 THE OFFICER INCHARGE
DISTRICT PRISON, THEKKAMPATTY, THENI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.R.SHANKAR GANESH, Advocate (SR-3414[I] dated
06/03/2023)

ORDER
IN
CRL OP(MD) No.4171 of 2023
Date :03/03/2023

PKP/SBN/SAR- /03.03.2023/ **3P/6C**