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CRL OP(MD).



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

Date : 29/03/2023

PRESENT

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN

CRL OP(MD) . No.5536 of 2023

Nagaraj

... Petitioner/Accused

Vs

The State rep. by,  
The Inspector of Police,  
Radhapuram Police Station,  
Tirunelveli District.  
(Crime No.188/2022).

... Respondent/Complainant

For Petitioner : M/s.Micheal Heldon Kumar S,  
Advocate.

For Respondent : Mr.R.M.Anbunithi,  
Additional Public Prosecutor

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

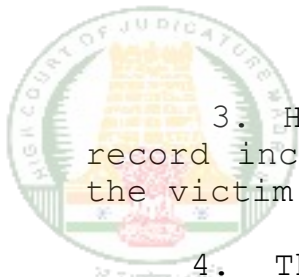
PRAYER :-

For Bail in Cr No.188/2022 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner /Accused who was arrested and remanded to judicial custody on 27.02.2023 for the offences under section 366 of IPC and sections 5(1), 6 of Protection of Children from Sexual Offences Act, 2012 in Crime No.188 of 2022 on the file of the respondent police seeks bail.

2. The case of the prosecution is that the petitioner on the false promise of marrying the victim on 25.09.2022 and 22.10.2022 when the victim was alone in her house had committed penetrative sexual assault on the victim girl. Thereafter on 11.11.2022 at 6.15 am., the petitioner had taken the victim girl to Coimbatore and again committed penetrative sexual assault on her, hence the case.



3. Heard both sides and perused the materials available on record including the First Information Report and the statement of the victim recorded under section 164 of Cr.P.C.

4. The petitioner fell in love with the victim girl aged about 17 years and six months. The victim was studying B.Com., I year in Madappuram Pet Arts and Science College. A perusal of the statement recorded from the victim under section 164 of Cr.P.C reveals the fact the petitioner fell in love with the victim girl and on that pretext they have physical relationship and they also eloped to Coimbatore. Thereafter they returned back to their native on the complaint lodged by the father of the victim girl.

5. The learned counsel appearing for the petitioner would submit that the petitioner is ready and willing to marry the victim girl whenever she attains majority. He has also filed an undertaking affidavit before this Court. The relevant portion of the order reads as follows:

*1. I am the petitioner herein and also in the above petition as such I am well acquainted with the facts of the case.*

*2. The case of the prosecution is that the De-facto complainant is the father of the affected victim girl who is aged about 17 years 6 month and 6 days and studying B.Com 1st year at Madappuram Pet Arts and Science College. On 25.09.2022 and 22.10.2022 when the victim girl was alone in her house the petitioner/accused came there and had committed penetrative sexual assault on the victim girl. Then on 11.11.2022 at 6.15 AM the petitioner/accused took the victim girl to Coimbatore by a sleeper bus has committed penetrative sexual assault on the victim girl.*

3. I submit that I was arrested by the Respondent Police on 27.02.2023 for the alleged offence under section U/S 366 of IPC, and offence under section 5(1), (6) of Protection of Children from Sexual Offences Act 2012 in Crime No.188 of 2022 and remanded to the judicial custody on the same day. Thereafter, I moved a Bail Petition before the Sessions Court, Special Court for POCSO Act Cases, Tirunelveli vide CrI.M.P. No. 704 of 2023 and the same was dismissed on 09-03-2023 and hence the above bail application has been filed before this Hon'ble court in CrI.O.P. (MD).No. 5536 of 2023.

4. I respectfully submit that the above bail petition came up for hearing before this Honourable court on 23-02-2023 and during the course of argument as per my instructions, my counsel has submitted before this Hon'ble court that the FIR lodged against me is a false complaint and due to the love affair alone this case has been falsely foisted against me, by the victim father/ complainant and I am always ready to marry the Victim girl. Therefore this court has directed me to file a undertaking affidavit.



5. I submit that I am fling this affidavit and I hereby undertake to marry the Victim girl.

6. Further the victim girl has also made statement that whenever the petitioner comes out from prison and when she attains majority she will decide about the marriage with the petitioner.

7. Taking into consideration the facts and submissions made by the learned counsels and also the period of incarceration 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 blood related sureties each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for POCSO Act Cases, Tirunelveli 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 after coming out from prison whenever the victim attains majority shall marry the victim girl and register the marriage before the concerned Registrar Officer and produce the marriage Registration certificate before the concerned police and trial Court. Further if he violates the said condition and refuse to marry the victim girl the bail granted to the petitioner shall stand cancelled and the respondent police is at liberty to secure the petitioner and proceed in accordance with law.

[d] the petitioner shall report before the respondent police daily at 10.30 A.M. until further orders.

[e] the petitioner shall not commit any offences of similar nature.

[f] the petitioner shall not abscond either during investigation or trial.

[g] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[h] 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



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[i] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

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

AAV

TO

1. The Sessions Judge,  
Special Court for POCSO Act Cases, Tirunelveli.
2. The Superintendent, Central Prison, palayamkottai.
3. The Inspector of Police,  
Radhapuram Police Station,  
Tirunelveli District.
4. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S.MICHEL HELDON KUMAR, Advocate ( SR-5023[I] dated 29/03/2023 )

ORDER

IN

CRL OP(MD) No.5536 of 2023

Date : 29/03/2023

NA/MMS/SAR- /29.03.2023/4P/6C