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CRL OP(MD). A



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 23/06/2023

PRESENT

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

CRL OP(MD). No.11311 of 2023

Murugan

... Petitioner/Accused

Vs

State Rep.by
The Inspector of Police,
All Women Police Station,
Kanyakumari District.
Crime No.12 of 2023.

... Respondent/Complainant

For Petitioner : M/s.Muneeswaran B,
Advocate.

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

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

PRAYER :-

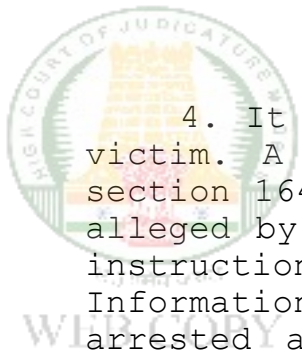
To enlarge the petitioner/accused on bail in special sessions case no.38/2023 in crime no.12/2023 on the file of respondent police.

ORDER : The Court made the following order :-

The petitioner /Accused who was arrested and remanded to judicial custody on 17.04.2023 for the offences under sections 376 (AB), 506(i) of IPC and section 5(m), 5(n), 5(l) and 6 of POCSO Act in Crime No.12 of 2023 (Spl.S.C .No.38 of 2023 by the learned Sessions Judge, Special Court for Exclusive trial of cases under POCSO Act, Kanniyakumari at Nagercoil) on the file of the respondent police seeks bail.

2. The victim is aged about 6 years and the petitioner is aged about 34 years. The case of the prosecution is that the accused who is the father of the victim had committed penetrative sexual assault on his own daughter and threatened 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. It is seen that the petitioner is the father of the victim. A perusal of the statement of the victim recorded under section 164 of Cr.P.C reveals the fact that nothing had happened as alleged by the prosecution. She further submitted that as per the instructions given by her aunt she deposed and as such the First Information Report came to be registered and subsequently he was arrested and remanded to judicial custody. It is seen that the petitioner used to beat the child and therefore the complaint has been lodged as against the petitioner. Now the respondent police completed investigation and filed final report and the same has been taken cognizance in Spl.S.C .No.38 of 2023 by the learned Sessions Judge, Special Court for Exclusive trial of cases under POCSO Act, Kanniyakumari at Nagercoil.

5. 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 sureties each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for Exclusive trial of cases under POCSO Act, Kanniyakumari at Nagercoil 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 shall report before the learned Sessions Judge, Special Court for Exclusive trial of cases under POCSO Act, Kanniyakumari at Nagercoil on all working days at 10.30 A.M. and 5.30P.M., for a period of two weeks and thereafter on all hearing dated without fail.

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

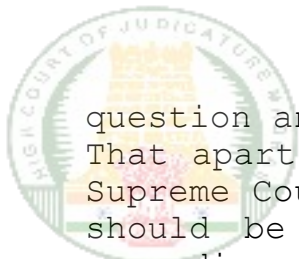
[e] the petitioner shall not abscond either during investigation or trial.

[f] the petitioner shall not tamper with evidence or witness 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 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 SCW 5560].

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

6. From the reading of the statement of the victim recorded under section 164 of Cr.P.C revealed that it is in the form of



question and answer, which is against the provisions of 16. That apart statement was recorded by a male magistrate. The Hon'ble Supreme Court of India repeatedly held that in cases of rape victims should be produced preferably before the lady magistrate, while recording statement and it should be kept in sealed cover and the same to be treated as evidence at the stage of trial by producing the same in record in accordance with law which may be put to test by subjecting it to cross examination. In this regard the Director General of Police, Tamil Nadu had issued circular to all the Investigation Officers that they shall as far as possible take the victim to the nearest Lady magistrate to record statement of the victim under section 164 of Cr.P.C.

7. In view of the same, the Director General of Police is hereby again directed to issue necessary direction to all the Investigation Officers to the effect that while recording statement of the victim under section 164 of Cr.P.C., they shall produce the victim before the lady Magistrate as far as possible.

sd/-

23/06/2023

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23/06/2023

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

AAV

TO

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

COPY TO

THE DIRECTOR GENERAL OF POLICE,
STATE OF TAMILNADU, CHENNAI.

+1 CC to M/s.B.MUNEESWARAN, Advocate (SR-9450[I] dated 23/06/2023)

ORDER IN

CRL OP(MD) No.11311 of 2023

Date :23/06/2023

RS/VR/SAR-(23.06.2023) 3P 7C