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

Date : 05/01/2023

PRESENT

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

CRL OP(MD). No.22275 of 2022

M.Senthamilselvan ... Petitioner/Accused Rank Not Known

Vs

The state rep.by
The Inspector of Police,
All Women-Tenkasi Police Station,
Tenkasi District.
Crime No.3 of 2022.

... Respondent/Complainant

For Petitioner : M/s.Dinesh K,
Advocate.

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

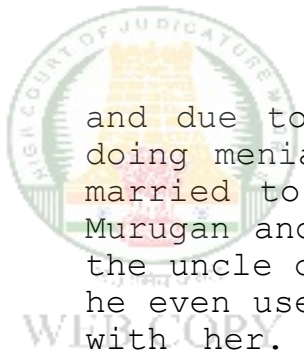
PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

PRAYER :-For Anticipatory Bail in Crime No.3 of 2022 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioner/accused who apprehends arrest at the hands of the respondent police for the offences punishable under sections 457,450,376 of IPC and Sections 10,9(n),6,5(n),5(i),5(j)(ii) of the Protection of Children from Sexual Offences Act,2012 in Crime No.3 of 2022 on the file of the respondent police, seeks anticipatory bail.

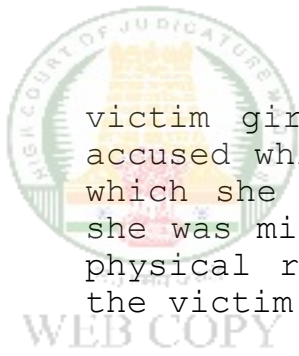
2. The complaint has been registered based on the statement recorded on 22.06.2022 from the victim girl (XXXX) born on 25.06.2003. The case of the prosecution is that the victim girl was forcefully subjected to intercourse by several persons against her consent, due to which she is 5 months pregnant. The victim has given a statement that she is residing along with her father and grandmother and she had completed 10th standard and she was born on 25.06.2003. The father of the victim was unemployed and the victim
<https://www.mh1.in.gov.in/judis> ... from the old age pension of her grandmother eking out her life



and due to her poverty she used to go to neighbouring house for doing menial works. The neighbour of the victim namely Sathiya was married to one Mariappan . The father of the said Mariappan was Murugan and his wife died 6 years back and the said Murugan who was the uncle of the victim used to have good relationship with her and he even used to give money to her and he is maintaining relationship with her. During 2019 the above said Murugan with an illegal intention hugged the victim girl and when the victim girl questioned the same, he regretted for the act. Further on 07.01.2020 at about 1.00 am., the said Murugan with an illegal intention forcefully had sexual intercourse with the victim girl against her wish and thereafter had sexual intercourse with her on several occasions. Thereafter while the victim was alone in her home one Suresh had become close friend to her and on false assurance of marriage and using the innocence of the victim girl had committed sexual intercourse with her in the month of May, 2020 and thereafter in continuance of the same for the past two years the said Murugan and Suresh used to have sexual intercourse with victim girl. In addition to it on 07.10.2021 and 11.10.2021 the accused persons namely Murugan and Suresh had sexual intercourse with her and due to which she is five months pregnant. Based on her statement the case came to be registered against the above persons. Later the victim was taken before the learned Judicial Magistrate and a further statement was recorded from her under Section 164 of Cr.P.C and the petitioner was also implicated as an accused.

3. The learned counsel for the petitioner would submit that the petitioner is innocent and a false case has been foisted against him. He would further submit that petitioner is arrayed as A3 in this case. The victim had made allegation against one Veluchamy @ Murugan and Suresh who are stated to have ravished her while she was minor. Subsequently during the course of investigation statement has been recorded from the victim under Section 164 of Cr.P.C, wherein she had stated that she had also had consensual physical affair with the petitioner on a later date. He would further submit that the physical relationship was consensual in nature and the petitioner was under the impression that the victim girl was major and even as per the prosecution the victim had stated that physical affair between the petitioner and victim had happened on 26.12.2021 on which date the victim was major and taking into consideration the age of the victim and the date of occurrence the petitioner cannot be hauled up either for offence under the POCSO Act or under Section 376 of IPC and he would reiterate that admittedly the affair between them was consensual in nature. He would further submit that the main accused have been detained under Act.14 of 1982. He would also submit that the petitioner is ready to co-operate for investigation and as and when called for and he is also ready to give blood samples for DNA test, hence he seeks bail.

4. The learned Government Advocate(Crl.Side) appearing for the respondent would submit that the petitioner is arrayed as A3. The



victim girl was born on 25.06.2003 and the first and the accused while she was minor had sexual intercourse with her, due to which she became pregnant. The main accused had ravished her while she was minor. The allegation against the petitioner is that he had physical relationship with her on 26.12.2021 with the consent of the victim girl and on that date the victim was a major.

5. Heard. Perused the materials available on record including the First Information Report and the statement of the victim girl recorded under Section 164 of Cr.P.C and also the further statement of the victim girl recorded on 10.06.2022

6. Taking into consideration of the facts and circumstances of the case and also the submission made by the learned counsel for the petitioner this court is inclined to grant anticipatory bail to the petitioner, with certain conditions:

7. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date on which the order copy made ready, before the learned Special Judge for POCSO Act cases, 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 Magistrate 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 Magistrate may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity.

[b] in the event of the respondent filing application for furnishing blood samples for conducting DNA Test the petitioner shall furnish the same without fail.

[c] the petitioner shall report before the respondent Police, daily at 10.30 a.m., for a period of four weeks and thereafter, on every saturday at 10.30 a.m., until further orders.

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

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

[f] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions were not imposed and the petitioner released on bail by the learned



Magistrate/Trial Court himself as laid down by the Hon'ble Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

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

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

TO

- 1 THE SPECIAL JUDGE FOR POCSO ACT CASES,
TIRUNELVELI.
 - 2 THE INSPECTOR OF POLICE
ALL WOMEN-TENKASI POLICE STATION, TENKASI DISTRICT.
 - 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1 CC to M/s.DINESH K, Advocate (SR-314[I] dated 06/01/2023)

ORDER
IN
CRL OP(MD) No.22275 of 2022
Date :05/01/2023

AAV
MK/VR/SAR IV(19.01.2023) 4P 5C