



CRL OP(MD). No.20468 of 2023

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

Date : 29/11/2023

PRESENT

The Hon`ble Mr.Justice V. SIVAGNANAM
CRL OP(MD). No.20468 of 2023

Vishal Dhas

... Petitioner/Sole Accused

Vs

State Rep.by
The Inspector of Police,
All Women Police Station,
Kanyakumari, Kanyakumari District.
(In Crime No.20 of 2023).

... Respondent/Complainant

For Petitioner : M/s.George Paul Anto, Advocate.
For Respondent : Mrs.M.Aasha, Government Advocate (Crl.Side)

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

PRAYER :- For Anticipatory Bail in Crime No.20 of 2023 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 376(3) IPC and Section 5(1), 6 of POCSO Act and Sections 9 and 10 of Child Marriage Act * altered U/s.376 (3), 449 of IPC and Sec.5(1), 6 of POCSO Act and Sec.9, 10 of Child Marriage Act r/w.3(1)(w)(i) of SC/ST Act (Prevention of Atrocities) Act, 1989 in Crime No.20 of 2023, on the file of the respondent police, seeks anticipatory bail.



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2.The case of the prosecution is that due to love affair the petitioner herein had tied Thali to the victim, who is a minor, on 27.03.2023 and he had sexual intercourse with her. Hence, the case.

3.The learned counsel appearing for the petitioner submitted that the petitioner is innocent and he has not committed any offence as alleged by the prosecution and his name has been falsely implicated in this case and hence, seeks anticipatory bail.

4.The learned Government Advocate (Crl. Side) appearing for the respondent submitted that the petitioner herein has forcibly tied thali to the victim, who is the minor and had sexual intercourse with her. He would further submit that based on the complaint given by the Social Welfare Officer, case has been registered against the petitioner and the investigation of the case is pending.

5.On perusal of the FIR, it is noticed that it is a case of child marriage.

6.Taking into consideration the principles stated by the Honourable Supreme Court in Gurubaksh Singh Sibbia Etc., vs. State of Punjab reported in 1980 AIR 1632 and Lal Kamlendra Pratap Singh vs. State of Uttar Pradesh and others reported in (2009)4 SCC 437 and Joginder Kumar vs. State of U.P. and others reported in (1994)4 SCC 260, this Court is of the considered view that the alleged offence against the petitioner is not a case of heinous crime. Further, the petitioner



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is having permanent resident at Kanniyakumari District and the origin of the crime is matrimonial dispute. In this circumstances, the principles stated in Hussainara Khatoon & Ors vs. Home Secretary, State Of Bihar reported in AIR 1979 SC 1360 is taken into consideration. In that case, the Hon'ble Supreme Court has cautioned that pre-trial detention is not be encouraged nor is to be encourageable pre-trial release on sureties; that if the Court is satisfied after taking into consideration that the accused has his roots in the community and is not likely to abscond, he can safely be released on his personal bond.

7. In view of the above, I am inclined to grant anticipatory bail to the petitioner. 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 Special Court for Exclusive Trial of Cases under POCSO Act, Kanniyakumari District at Nagercoil on condition that the petitioner shall execute own bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) 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 shall appear before the trial Court on receipt of summons as directed by the trial Court.



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

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

[d] 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 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].

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

sd/-
29/11/2023

(*)AMENDED AS PER ORDER OF THIS COURT
DATED 21.12.2023 IN CRL MP(MD)NO.18024 OF
2023 IN CRL OP(MD)NO.20468 OF 2023

Further two weeks time is granted to the petitioner to comply with the conditions imposed by this Court from the date of receipt of a copy of this order.

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/01/2024
Sub-Assistant Registrar
(C.S. I / II / III /IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TRP



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TO

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TO BE SUBSTITUTED WITH THE ORDER DATED 29/11/2023 ALREADY
DESPATCHED

1 THE JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES UNDER POCSO ACT,
KANYAKUMARI DISTRICT AT NAGERCOIL.

2 THE INSPECTOR OF POLICE, ALL WOMEN POLICE STATION,
KANYAKUMARI, KANYAKUMARI DISTRICT.

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

+1 CC to M/s.L.GEORGE PAUL ANTO, Advocate (SR-18233[I] dated 22/12/2023)

ORDER
IN

CRL OP(MD) No.20468 of 2023

Date :29/11/2023

RS/JGB/SAR-(06.12.2023) 5P 5C

ED/ JGB /SAR- (09/01/2024) 5P / 5C

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