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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.23201 of 2022

Udhayam @ Arokiya Anto Udayam

... Petitioner/Petitioner
/Sole Accused

Vs

State Rep.by
The Inspector of Police,
All Women Police Station,
Kanniyakumari,
Kanniyakumari District.
Crime No.15 of 2022.

... Respondent/Respondent
/Complainant

For Petitioner : M/s.Vamanan.K, Advocate.
For Respondent : Mr.A.Albert James,
Government Advocate (Crl.Side)

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

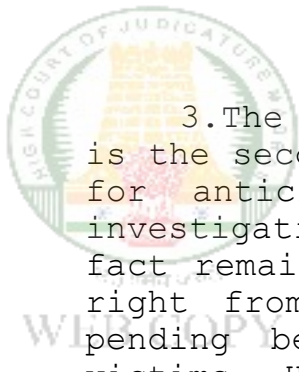
PRAYER :-

For Anticipatory Bail in Crime No.15 of 2022 on the file of the respondent Police.

ORDER : The Court made the following order :-

The petitioner/sole accused who apprehends arrest at the hands of the respondent police for the offences punishable under sections 11(1), 12 of Protection of Child from Sexual Offences Act, 2012, in Crime No. 15 of 2022 on the file of the respondent police, seeks anticipatory bail.

2.The de-facto complainant who is the District Child Protection Officer has lodged a complaint before the respondent police stating that the petitioner had misbehaved with the victim girls by removing his clothes and exposing his private parts to the victim girls through his window. Therefore enquiry was conducted and the complaint was preferred before the respondent based on which the case was registered.



3.The learned counsel for the petitioner would submit that this is the second anticipatory bail petition and the earlier application for anticipatory bail was dismissed on the ground that the investigation was at the initial stage . He would submit that the fact remains that the petitioner and the victim are neighbours and right from the year 2018 there had been several civil disputes pending between the petitioner and the family members of the victims. He would submit that in the month of January 2018 the mother of the petitioner had lodged a criminal complaint against the parents of the victim in CSR No.24 of 2018 on the file of the Rajakkamangalam Police station and after enquiry the said complaint was closed by the police on the basis of compromise arrived at between the parties. Subsequently on 25.07.2018 the parents of the victim had attacked the mother of the petitioner and in that regard a complaint was lodged before the Rajakkamanagalam Police in CSR No.252 of 2018 and after the intervention of elders in the village complaint was closed. He would further submit that in continuation to the earlier quarrel the parents of the victim were making frequent disturbances without any reason. Thereby on 16.11.2021 the mother of the victim took video of the petitioner's house with her mobile phone and when it was questioned by the wife of the petitioner the mother of the victim pulled her down and snatched her thali chain and in the said occurrence the thali chain and the mobile phone got damaged. Immediately both of them lodged complaint before the Deputy Superintendent of police, Kanniyakumari District. The Deputy Superintendent of police during enquiry advised both parties not to indulge in skirmishes and both of them agreed not to fight. It is also further agreed by both the parties that the petitioner's family members shall pay the cost of the damaged cell phone and the opposite side shall pay the cost for repairing the thali chain. He would further submit that the same was not done as agreed by the mother of the victim. Thereafter the mother of the victim had lodged a false complaint before the Superintendent of Police alleging that he exposed his private parts. He would further submit that the petitioner was called for enquiry by the Superintendent of Police and he did not abscond and he appeared for enquiry. He would further submit that the allegation is malicious and false and that in this case there is no requirement for custodial interrogation, hence he seeks bail.

4.The learned Government Advocate(Crl.Side) appearing for the respondent would submit that the petitioner who is the neighbour of the defacto complainant had exposed his private parts to the victim girls who are aged about 5 and 7 years respectively from his house through a open window. However he would submit that the investigation has been completed and final report has been filed before the Special Court for Exclusively trial of cases under the POCSO Act, Kanniyakumari at Nagercoil

5.Heard. Perused the materials available on record including Information Report including the earlier complaints



regarding the dispute between the petitioner and the complainant family and the photos of the house.

6. Taking into consideration of the facts and circumstances of the case and that the final report has been filed in this 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 Special Court for Exclusively trial of cases under the POCSO Act, Kanniyakumari at Nagercoil 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] the petitioner shall report before the Special Court for Exclusively trial of cases under the POCSO Act, Kanniyakumari at Nagercoil on all working days at 10.30 a.m., and thereafter on the date fixed by the learned Sessions Judge.

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

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

[e] 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].

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

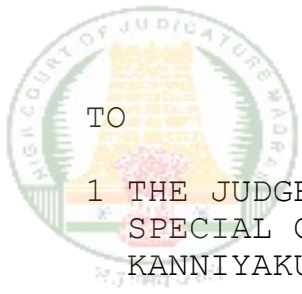
sd/-

05/01/2023

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



TO

1 THE JUDGE,
SPECIAL COURT FOR EXCLUSIVELY TRIAL OF CASES UNDER THE POCSO ACT,
KANNIYAKUMARI AT NAGERCOIL.

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

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

ORDER

IN

CRL OP(MD) No.23201 of 2022

Date :05/01/2023

RS/SSS/SAR.4(19.01.2023) 4P-4C