



CRL OP(MD). No.22415 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 13/12/2023

PRESENT

The Hon`ble Mr.Justice V. SIVAGNANAM

CRL OP(MD). No.22415 of 2023

Mathish

... Petitioner/Sole Accused

Vs

The Inspector of Police,
All Women Police Station,
Colachel,
Kanyakumari District.
Crime No.32 of 2023..

... Respondent/Complainant

For Petitioner : Mr.Nimal C.R.,
Advocate.

For Respondent : Mr.Rms.Sethuraman,
Additional Public Prosecutor

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

PRAYER :-

For Anticipatory Bail in Crime No.32 of 2023 on the file of the Respondent Police.



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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 Section 5(1), 6, 9(1) and 10 of Protection of Child from Sexual Offences Act, 2012 in Crime No.32 of 2023 on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution is that on the pretext of marriage the petitioner has committed penetrative sexual assault on the victim. Hence, the case.

3.The learned Counsel appearing for the petitioner would contend that the petitioner is an innocent person and a false case has been foisted against him. Hence, he prays for anticipatory bail to the petitioner.

4. The learned Additional Public Prosecutor appearing for the respondent Police would submit that the petitioner herein on false promise of marrying the victim girl had committed penetrative sexual assault and thereafter, refused to marry her, hence, he objected to grant anticipatory bail to the petitioner.

5. Heard both sides and perused the materials available on record.

6. When the matter is taken up for hearing, the learned Additional Public Prosecutor has produced a copy of the 164 statement, wherein, the victim has clearly stated that she voluntarily went with the petitioner and she had love affairs with the



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petitioner. Therefore, considering the facts and circumstances of the case and 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 and taking into consideration the origin of crime, it is seen that the alleged offence against the petitioner is not a case of heinous crime. Further, the petitioner is having permanent resident at Kanyakumari District. Hence, 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, this Court is 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 learned Special Court for Exclusive



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Trial Cases under POSCO Act, Kanyakumari District at Nagercoil on condition that the petitioner shall execute a 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 Judge concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that :

[a] the petitioner shall affix his photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of his Aadhar Card or Bank Pass Book to ensure his identity.

[b] the petitioner shall report before the trial Court on summons.

[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].



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[f] If the accused thereafter absconds, a fresh FIR can be registered under

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Section 229A IPC.

sd/-
13/12/2023

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/12/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

SKN
TO

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

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

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

+1 CC to M/s.C.R.NIRMAL, Advocate (SR-17727[I] dated 14/12/2023)

ORDER
IN

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Date :13/12/2023

SS/JGB/SAR- /22/12/2023/5P/5C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023