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Crl.O.P.No.4739 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

CORAM

THE HON'BLE MR. JUSTICE **G.CHANDRASEKHARAN**

Crl.O.P.No.4739 of 2024

Lenin Kumar @ Parthiban

...Petitioner

Vs.

State rep. by the Inspector of Police,
All Women Police Station,
Harur, Dharmapuri District.

...Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to grant bail to the petitioner till the disposal of trial pending in Spl.S.C.No.303 of 2023 pending on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Dharmapuri.

For Petitioner : Mr.V.Parthiban

For Respondent : Mr.V.Meganathan
Government Advocate (Crl.side)



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ORDER

The petitioner, who was arrested and remanded to judicial custody on 09.06.2023 for the offences punishable under Sections 376(2)(f), 376(2)(n), 376(3), 449, 366, 506(i) of IPC and Sections 5(I) and 5(j)(ii) r/w 6 (1) POCSO Act in Spl.SC.No.303 of 2023 pending on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Dharmapuri, seeks bail.

2.The earlier bail petition filed by the petitioner was dismissed on 07.08.2023. This is the 2nd bail petition.

3.It is submission of the learned counsel for the petitioner that DNA report had been received from the Forensic Sciences Department. The report was given, after analysing the DNA profile of the foetus and DNA profile of the petitioner and the biological mother XXX. On analysis, the Scientific Officer came to the conclusion that, petitioner is excluded from the paternity of the foetus. Therefore, learned counsel for the petitioner seeks bail on the ground that, petitioner is not responsible for making the victim girl pregnant.



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3.1.That apart, investigation is completed and final report is filed and the case is pending in Spl.SC.No.303 of 2023 before the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Dharmapuri.

4.Learned Government Advocate (Criminal side) opposed the grant of bail on the ground that opinion of the expert is not conclusive.

5.Considered the rival submissions and perused the records.

6.From the report received from the Forensic Science Laboratory in TN.No.10704/2023 DNA/838/2023 dated 22.01.2024, after analysis of the DNA profile of the foetus and the DNA profile of the petitioner and biological mother XXX, the Scientific Officer came to the following conclusion,

“From the DNA typist results of the above samples, it is found that

1.the gender of the foetus (of ref 2) is found to be female.



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2.Mr.Leninkumar @ Parthiban is excluded from the paternity of the foetus (of ref 2).”

7.From this conclusion, it is established that petitioner is excluded from the paternity of the foetus (of reference 2).

8. Considering the submissions of the learned counsel appearing for the parties and the report of the Forensic Sciences Department, this Court is inclined to grant bail to the petitioner with conditions.

9.Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of **Rs.25,000/-** (Rupees Twenty Five 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, Dharmapuri**, and on further conditions that :-

[a] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the



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Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioner shall appear before the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Dharmapuri, daily at 10.00 a.m. until further orders and on every hearing dates without fail.

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

[d] the petitioner shall not tamper with evidence or witness 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 Section 229A IPC.

04.03.2024

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To

- 1.The Sessions Judge, Special Court for Exclusive Trial of Cases under
POCSO Act, Dharmapuri,
- 2.The District Jail,
Dharmapuri.
- 3.The the Inspector of Police,
All Women Police Station,
Harur, Dharmapuri District.
- 4.The Public Prosecutor,
High Court of Madras



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G.CHANDRASEKHARAN. J.

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