

CRL OP(MD)No.10358 of 2025

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

Date : 30/06/2025

PRESENT

The HONOURABLE MR. JUSTICE P. VADAMALAI

CRL OP(MD)No.10358 of 2025

Senthilkumar,
S/o. Thangavel,
Door No.B1, Pothigai Nagar,
1st Street, Kosakulam,
Madurai District.

... Petitioner/ Accused No.1

Vs.

The State of Tamil Nadu,
Rep by its, the Inspector of Police,
Koodalpudur Police Station,
Madurai City.
In Crime No.151 of 2024.

... Respondent/Complainant

For Petitioner : Mr.Vignesh.K,
Advocate.

For Respondent : Mr.B.Thanga Aravindh,
Government Advocate (Crl.Side)

Petition filed under Section 483 BNSS

PRAYER :- For Bail in Crime No.151 of 2024 on the file of the Respondent Police.



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ORDER : The Court made the following order :-

The petitioner/Accused No.1 was arrested and remanded in judicial custody on 24.03.2024, for the offences under Section 174 Cr.P.C @ Sections 302, 201 of IPC, Sections 5(j)(iv), 5(l), 5(m), 5(n), 16, 17 and 6 of the Protection of Child from Sexual Offences Act, 2012 in Crime No.151 of 2024 on the file of the respondent-police.

2. The case of the prosecution is that the deceased, who is minor aged about 11 years, is the stepdaughter of the petitioner/Accused No.1 and his wife/Accused No.2. The petitioner showed obscene contents to the deceased and had penetrative sexual assault on her. On 21.03.2024, when the deceased was taking bath, the petitioner attempted to assault her sexually, when she resisted the same, the petitioner shut her mouth and strangulated her neck, due to which, she died. On knowing the fact, Accused No.2, who is the wife of the petitioner/Accused No.1, supported him and created a story as if the deceased committed suicide. Hence, the case.

3. The learned counsel appearing for the petitioner submits that this is the fourth bail application filed by the petitioner, the petitioner is an innocent person,



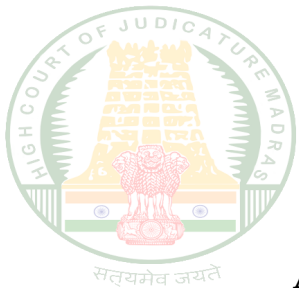
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and that he has not committed any offence as alleged by the prosecution. He further submits that the petitioner is serving as a Subedar in Indian Army, the respondent-police falsely registered the case against the petitioner, as if he committed the offence. He further submits that the petitioner has been in judicial custody since 24.03.2024 and is ready to abide by any conditions that may be imposed by this Court.

4. The learned counsel for the petitioner would rely on the decision of the Hon'ble Supreme Court in the case of Manish Sisodia V. Directorate of Enforcement reported in AIR 2024 SC 4053. The relevant paragraph of the judgment reads as under:-

"51. Recently, this Court had an occasion to consider an application for bail in the case of Javed Gulam Nabi Shaikh v. State of Maharashtra and Another wherein the accused was prosecuted under the provisions of the Unlawful Activities (Prevention) Act, 1967. This Court surveyed the entire law right from the judgment of this Court in the cases of Gudikanti Narasimhulu and Others v. Public Prosecutor, High Court of Andhra Pradesh, Shri Gurbaksh Singh Sibbia and Others v. State of Punjab, Hussainara Khatoon and Others (I) v. Home Secretary, State of Bihar, Union of India v. K.A. Najeeb and Satender Kumar



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Antil v. Central Bureau of Investigation and Another. The Court observed thus:

“19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

Therefore, he prays to grant bail to the petitioner.

5. The learned Government Advocate (Crl.side) appearing for the respondent submits that when the deceased was taking bath, the petitioner attempted to assault her sexually, when she resisted the same, the petitioner shut her mouth and strangled her neck, due to which, she died. Totally there are two accused in this case and the petitioner is arrayed as Accused No.1. Accused No.2 in this case has already been arrested and released on bail and after completing investigation, final report filed and the same was taken on file as Spl.S.C.No.56 of 2024 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Madurai and now, the case is pending trial. He further submits that at this stage, if this Court grants bail to



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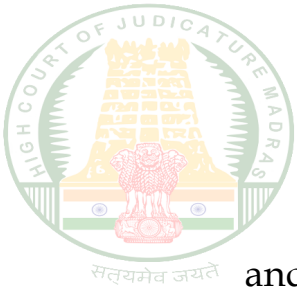
the petitioner, he may abscond and cause threat to the defacto complainant and other witnesses. Accordingly, he prays to dismiss this petition.

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6. Heard the learned counsel on either side and perused the materials available on records.

7. The prosecution filed the final report against the petitioner with allegation that he has committed penetrative sexual assault on his own step-daughter and murdered her. Charges are framed and PW.1 to PW.7 have been examined in chief and the petitioner has not cross examined the witnesses and filed the recall petition on 04.03.2025 and has filed the 3rd Bail Petition before this Court in CrI.OP.(MD). No.1362 of 2025 and this Court dismissed the bail petition on 25.03.2025. As per the usual procedure, the records of the CrI.O.P.(MD)No.1362 of 2025 also have been tagged along with this Bail Petition and this court perused the records and find the following reasoning of this court to dismiss the Bail Petition:

“Now the petitioner filed a petition in CrI.MP.No.364 of 2025 to recall PW.1 to PW.7 for Cross-examination and the same is posted tomorrow i.e., 26.03.2025. Hence, this court is of the view that at this stage, if bail is granted to the petitioner, he may abscond and cause threat to the Defacto-complainant



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and other witnesses. Therefore, this court is not inclined to enlarge the petitioner on bail. However, considering the period of incarceration, the Learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai, is directed to dispose of the case in Spl.S.C.No.56 of 2024 in a speedy manner without giving any unnecessary adjournments."

8. This is a case of not only penetrative sexual assault committed against his own step-daughter but also gruesome murder of his own step-daughter. The petitioner never cross examined the witnesses and the protection of the witnesses is a paramount consideration in this type of heinous offence. This Court also finds that the following portion of evidence in Chief examination of P.W.1.

“நீதிமன்றம் வழக்கின் விசாரணை ஒத்திவைக்கப்படுவதை குறித்து Typist-க்கு dictate செய்து முடித்தபோது சாட்சி நீதிமன்றத்திடம் ஆஜர் 1-வது எதிரி தன்னை பார்த்து ஆள்காட்டி விரலை நீட்டி தன்னை பார்த்து மிரட்டியது போல் வைத்தார் என்றும் சொன்னார். ஆஜர் 1-வது எதிரி இல்லை என்று சொன்னார்.”

9. In the case of Manish Sisodia vs. Directorate of Enforcement reported in AIR 2024 SC 4053 relied upon by the Learned Counsel for the petitioner, the reason stated there is that in the said case, prosecution raised objection to grant bail under



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PMLA Act without filing the final report. Therefore, the Hon'ble Supreme Court has granted bail holding that there was no commencement of trial and there was no possibility of trial being concluded in the near future. In this case, the petitioner himself has not co-operated for the trial being conducted by cross-examining the witnesses and protracting the trial. He can not be allowed to take advantage of his own wrong. In this case, there is a reasonable apprehension of potential threat to the witnesses. The witnesses are under fear psychosis. Therefore, this Court also recapitulates the principle laid down by the Hon'ble Supreme Court in granting bail in POCSO offences and heinous murder when the successive Bail petitions are filed :

10.The Hon'ble Supreme Court in the case of Chaman Lal v. State of Uttarpradesh reported in 2004 (7) SCC 525, has held that while granting bail, following factors are to be considered.

- (i) Nature of the accusation and severity of the punishment in case of conviction and nature of the supporting evidence.
- (ii) Reasonable apprehension of tampering the witness or apprehension of threat to the complainant.
- (iii) Prima facie satisfaction of Court in support of the charge.



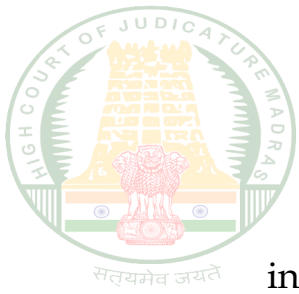
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11. It is relevant to refer the judgment of the Hon'ble Supreme Court in the case of Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana reported in (2021) 6 SCC 230 held as follows:

“This is for the reason that the outcome of the application has a significant bearing on the liberty of the accused on one hand as well as the public interest in the due enforcement of criminal justice on the other. The rights of the victims and their families are at stake as well. These are not matters involving the private rights of two individual parties, as in a civil proceeding. The proper enforcement of criminal law is a matter of public interest.”

12. In the case of Sudha Singh v. State of U.P., reported in (2021) 4 SCC, the Hon'ble Supreme Court has held as follows:

“8. We find in this case that the High Court has overlooked several aspects, such as the potential threat to witnesses, forcing the trial court to grant protection. It is needless to point out that in cases of this nature, it is important that courts do not enlarge an accused on bail with a blinkered vision by just taking into account only the parties before them and the incident in question. It is necessary for courts to consider the impact that release of such persons on bail will have on the witnesses yet to be examined and the



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innocent members of the family of the victim who might be the next victims."

13. In the case of Brijmani Devi v. Pappu Kumar, reported in (2022) 4 SCC 497 the Hon'ble Supreme Court has held as follows:

"25. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a court to arrive at a prima facie conclusion. "

14. In the case of Shabeen Ahmad v. State of U.P., reported in (2025) 4 SCC 172.

"12.Allowing alleged prime perpetrators of such heinous acts to remain on bail, where the evidence indicates they actively inflicted physical, as well as mental, torment, could undermine not only the fairness of the trial but also public confidence in the criminal justice system.



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15. A superficial application of bail parameters not only undermines the gravity of the offence itself but also risks weakening public faith in the judiciary's resolve to combat the menace of dowry deaths. It is this very perception of justice, both within and outside the courtroom, that courts must safeguard, lest we risk normalising a crime that continues to claim numerous innocent lives. These observations regarding grant of bail in grievous crimes were thoroughly dealt with by this Court in *Ajwar v. Waseem* (2024) 10 SCC 768."

15. Further, incarceration of long period is not a ground to grant bail in the present nature of the heinous offence, more particularly the petitioner has not cooperated to complete the trial by cross-examining the witnesses. In this aspect, it is relevant to note the judgment of the Hon'ble Supreme Court in the case of *Jaibunisha v. Meharban* reported in (2022) 5 SCC 465 reads as follows:

"9(f). Another factor which should guide the courts' decision in deciding a bail application is the period of custody. However, as noted in *Ash Mohammad v. Shiv Raj Singh* [(2012) 9 SCC 446] the period of custody has to be



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weighed simultaneously with the totality of the circumstances and the criminal antecedents of the accused, if any. Further, the circumstances which may justify the grant of bail are to be considered in the larger context of the societal concern involved in releasing an accused, in juxtaposition to individual liberty of the accused seeking bail.”

16. In this case, the final report was filed with the list of material documents and material witnesses and the witnesses have deposed about the heinous offence committed under the provisions of the POCSO Act and the murder of his own step daughter urged by sexual lust entails severe punishment. As on date there is no completion of cross-examination of the material witnesses. This Court finds no change of circumstances to consider this bail petition to grant bail to the petitioner. There is reasonable apprehension of threat to the witnesses and hence this court finds no merits in the petition and this petition is liable to be dismissed.



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17. In the result, this Criminal Original Petition is dismissed. However, this Court grants liberty to file fresh bail petition after cross-examination of all the material witnesses.

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

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To

1. The Special Court for Exclusive Trial of Cases under POCSO Act, Madurai.
2. The Inspector of Police, Koodalpudur Police Station, Madurai City.



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3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER
IN
CRL OP(MD) No.10358 of 2025
Date :30/06/2025

PS/SAR.18.07.2025 13P/4C

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