

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2021

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CrI.O.P.No.3041 of 2021

Syamala Sundarraaj

...Petitioner

Versus

1.The State represented by its
Inspector of Police,
All Women Police Station,
Puliantope, Chennai-12.

2. Santhosh Prem Kumar

..Respondents

This Criminal Original Petition is filed under Section 482 of Criminal Procedure Code 1973 the set aside the return docket order dated 04.02.2021 passed in Cr.M.P. SR.No.50 of 2021 by the Special Judge, for the Exclusive Trial of POCSO Cases at Madras and consequently, direct the Special Judge, for the Exclusive Trial of POCSO Cases at Madras to taken the petition on file.

For Petitioner : Mr.Govind Chandrasekhar

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

O R D E R

This petition has been filed challenging the docker order passed by the learned Special Judge for the Exclusive Trial of POCSO Cases at Madras in Cr.M.P.No.50 of 2021, dated 04.02.2021, returning the petition filed by the petitioner seeking for cancellation of bail granted in favour of the accused person.

2. Based on the complaint given by the petitioner to the first respondent police, a First Information Report came to be registered in Crime No.6 of 2020 against the second respondent for offences under Sections 5(1), 5(m), 5(n) and 6 of Protection of Children from Sexual Offences Act, 2021 (hereinafter referred to as 'The POCSO Act'). The second respondent was arrested and remanded to judicial custody on 05.06.2020. It is seen from records that the second respondent was granted statutory bail by the Court below by an order dated 03.09.2020.

3. The petitioner, who is the grandmother of the victim girl found that the accused person was misusing his liberty and

was causing threat to the victim girl and the petitioner. The petitioner, therefore, moved an application before the Court below seeking for cancellation of bail. The Court below has refused to entertain the said petition on the ground that it should be filed only through the Special Public Prosecutor and the petitioner cannot directly maintain such a petition. Aggrieved by the same, the present petition has been filed before this Court.

4. Heard Mr.Govind Chandrasekhar, learned counsel for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing on behalf of first respondent.

5. In the considered view of this Court, the Court below completely misdirected itself in holding that a petition for cancellation of bail can be filed only through a Special Public Prosecutor. It is now a settled law that the victims of crime are also equally entitled to participate in the administration of criminal justice and more particularly, when it concerns an offence under the POCSO Act. The Act itself confers such a right on the victim and her family under Section 40 of the POCSO Act. This Court has also held in *Jesinthamary C. Selvaraj & Others* reported in 2016 SCC online Madras 23457 that the defacto complainant can file a petition for cancellation of bail granted to the accused person. Unfortunately, the Court below did not take into consideration all these aspects and has mechanically returned the petition filed by the petitioner seeking for cancellation of bail.

6. In view of the above discussion, the Court below is directed to immediately entertain the petition filed by the petitioner for cancellation of bail and deal with the same strictly in accordance with law.

7. This Criminal Original Petition is disposed of with the above directions. Registry is directed to return the original petition for cancellation of bail filed by the petitioner to the counsel for the petitioner after retaining the copy of the same in the case bundle.

rli

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Special Judge, for the Exclusive
Trial of POCSO Cases at Madras

2. The Inspector of Police,
All Women Police Station,
Puliantope, Chennai-12.

3. The Public Prosecutor,
High Court of Madras.

+ 1 cc to M/s. Govind Chandrasekar, Advocat Sr.9340

Crl.O.P.No.3041 of 2021

KV(CO)
EU 18.02.2021



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