



filthy languages and slapped her thereby touching her private parts of the body and hence the present complaint.

3. Mr.John Sathiyan, learned Senior Counsel for the petitioners submitted that the first petitioner/S.Thila was initially married to a person and she got divorce. So also De-facto complainant viz., Dr.Prabhu Thilak S/o.Elango and Former DGP, Thilakavathi, I.P.S, was also married and got divorce and after respective divorce, both of them got married on 24.10.2007. For both of them it is a second marriage. Through their legal wedlock, they begotton two children by name viz., Mr.X and Mr.Y, are born out of the wedlock. The second petitioner is the maternal uncle. There has been several complainants between the parties and a false complainant has been given against the petitioners and hence, seeks pre-arrest bail in Crl.M.P.No.11191 of 2023 filed by the de-facto complainant/intervnor is allowed.

4. Mr.V.Raghavachari, learned Senior Counsel for the intervenor/ de-facto complainant contended that the statement of the victim recorded under Section 164 of Cr.P.C and emphasis upon the version contained therein.

5(a). The learned Government Advocate appearing for the respondent



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stated that the investigation is completed and draft charge sheet is made ready to file. Accordingly, orders have been reserved on 18.08.2023.

5(b). Thereafter, on 21.08.2023, it appears that the de-facto complainant/intervenor appears to have filed a Memo which was put up in the bundle on Wednesday ie., on 23.08.2023, certain observations have been made against the submissions made by the learned Government Advocate in open Court.

5(c). Accordingly, the matter was posted on 25.08.2023 “for being spoken to” and clarification on the stand of the Government is ascertained. According, to the learned Government Advocate, the investigation is completed, however, draft charge sheet has been submitted to the higher officials for further corrections if any. Accordingly, orders have been reserved.

5(d). It is further submitted by the Government Advocate that pursuant to 41A notices issued to both the accused, they have been co-operating with the investigation and submitted all the records and the material part of the investigation is complete.



6. For the sake of convenience and clarity, parties are referred to as per the relationship with the minor girl viz, father, mother, and her brother viz., the maternal uncle.

7. The marriage between the father and mother of the minor girl was solemnized on 24.10.2007 and had two children as stated supra. The mother has made an allegations as against the father that he had an illicit relationship with another women and resulted in ill-treatment and trouble. There is no love last between the mother and father and due to the failed marriage, the mother left the matrimonial home and filed Domestic Violence Petition in D.V.C.No.95 of 2022 on 22.09.2022 and the same is pending. Another complaint in C.S.R.No.475 of 2022 is also pending before the All Women Police Station-II, Salem, against her husband and mother-in-law who is said to be former DGP of Tamil Nadu and another girl. Yet another case is filed by Dr.Indira Priyadharshini against the mother in C.C.No.310 of 2022 for the offence under Section 294B, 355, 323, 506(ii) I.P.C read with Section 4 of the Tamil Nadu Prohibition of Women's Harassment Act, 2002 with B5 Tirumangalam Police Station. According to the mother, the custody of the minors were with her initially and a H.C.P is filed by the father in H.C.P.No.2607 of 2022 whereby the Division Bench of this Court has granted custody to the father. The said



order was made on 22.12.2022.

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8. The sum and substance of the present complaint in Crime No.3 of 2023 at All Women Police Station, Vadapalani is that the mother called her daughter over phone to return her jewels, costly watches, cosmetics purchased by the father. At that time, the mother alleged to have shouted and abused her and the maternal uncle threatened and abused her through the mobile conversation. It is the further case of the prosecution that the father has messaged the mother to return the articles of the minor child for which the mother alleged to have replied to the father to send the minor girl and collect the articles.

9. The crux of the allegation in the complaint is that on 20.03.2022 (after the pronouncement of the order in H.C.P., whereby the custody of the minors were given to the father) at about 7.00 a.m, when the child went to the maternal uncle's home, she was alleged to have scolded by the mother and the maternal uncle in abusive language and the maternal uncle slapped and touched her private parts inappropriately and told her that her articles could not be returned. Such an act of the maternal uncle have been noticed by the mother, she had not given a complaint to the police and therefore, a case has been



lodge under the POCSO Act by father of the minor girl against the mother and maternal uncle of the minor girl.

10. The learned Senior Advocate appearing for the accused herein could contend that the visit of the child to the petitioner's house was videographed using a cellphone. The video shows that, the child had come with a person and taken her belongings and nothing of any sort as alleged in the First Information Report had taken place, especially the allegation with regard to sexual abuse, said to have been committed by the 1st petitioner (maternal uncle) against the child. The cellphone with video recording was sent to the Truth Labs for analysis. Petitioners are prepared to produce the original mobile phone with video recording of the incidents that had happened at the residence of the petitioners on 23.12.2022 or the secondary evidence of video recording with certificate under Section 65B of Indian Evidence Act. If the respondent police analyzes the video recording, it would be evident that, the allegations made in the First Information Report are totally false. He also produced a copy of the video recording for the perusal of this Court.

11. Counsel for the intervenor/de-facto contended that there is contradiction with regard to electronic evidence available in connection with



the incident.

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12. It appears that both the accused has preferred in Crl.O.P.No.9812 of 2023 under Section 482 of Cr.P.C. to quash the present FIR. Initially there was an interim stay and by order dated 30.06.2023, the same was dismissed dismissed. For better understanding the relevant paragraph 11 and 12 of the said order is extracted hereunder.

"11. There is no doubt that, allegations made in the First Information Report make out a prima facie case for registration of First Information Report for the commission of sexual harassment as defined under POCSO Act and these allegations are supported by Section 164 Cr.P.C. statement. However, there is a genuine doubt arises in the mind of this Court, as to whether the sexual harassment incident as alleged in the First Information Report could have happened, after all the acrimonious fight in connection with child custody; unpleasant cellphone conversation on 22.12.2022 between the petitioners and victim girl and when there are multiple criminal proceedings pending between the 2nd petitioner and 2nd respondent.

12. This Court viewed that compact disk containing the video recording, allegedly, of the incident



that said to have happened on 23.12.2022 at the residence of the petitioners, when the child came to collect the articles. The video recording shows that, the victim girl had visited the house of the petitioner with a safari clad man and collected the articles. Except some exchange of words between the 2nd petitioner and victim girl, no other incident was recorded, especially the alleged sexual harassment said to have been committed by the 1st petitioner against the victim girl."

13. The learned Single Judge had also held that it is the matter for investigation and ordered for monitoring investigation by the Deputy Commissioner of Police, since, the de-facto complainant happened to be the son of Former DGP, an high ranking police Officer.

14. Taking into considerations, the submissions made by the learned Senior Advocates appearing for the respective parties and the statement of the Public Prosecutor is that the substantial part of the investigation is over and draft charge sheet is in process.

15. The averment made against the 2nd petitioner (mother of the minor child) is that she failed to report the incident of the alleged sexual harassment



after knowing about it, which falls under Section 21 of POCSO Act. Under the POCSO Act, Section 21, failure to report the offence as defined in the POCSO, is liable for prosecution and on conviction, the maximum punishment is 6 months S.I and the minimum punishment prescribed for is “only fine”.

16. In the decision rendered by this Hon'ble Supreme Court in P.Chidambaram Vs. Union of India, while grant of anticipatory bail, has observed that severity of the alleged offence and the punishment prescribed therefor should be taken as a yardstick. The averments as stated in the complaint is that the mother has failed to report the alleged sexual harassment alleged to have been committed by the maternal uncle on the victim girl. Hence, taking into consideration the alleged offence to have been made against the mother and the ration laid down in the above stated judgment and the stage of the investigation that it has been substantial part of the investigation is completed., I am inclined to grant anticipatory bail/ pre-arrest bail to the mother namely the 1st petitioner herein.

17. As against the 2nd petitioner/maternal uncle, I have gone thorough the 164 Cr.P.C. Statement of the victim girl. The learned Senior Advocate for the petitioner/accused contended that since the custody of the minor child was



with the father, she was tutored. At this stage of the anticipatory bail, this Court cannot evaluate the statement of the victim girl given under Section 164 Cr.P.C in respect of the offence under POCSO and hence, I am not inclined to grant anticipatory bail to the second petitioner/maternal uncle.

18. Accordingly, this petition for pre-arrest bail is dismissed as against the second petitioner. However, as against first petitioner considering the above factual position and also the submissions made by the learned Senior Counsel for the petitioner and the records produced before this Court and observations made in the preceding paragraphs, this Court is inclined to grant anticipatory bail to the 1st petitioner with certain conditions.

19. This Criminal Original Petition is partly allowed as against the 1st petitioner and dismissed as against the second petitioner.

20. Accordingly, 1st 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 IV-Metropolitan Magistrate Court, Saidapet, Chennai**, 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 1st respondent police once in a week i.e., on every Wednesday and Saturday at 10.30 a.m., until further orders;

[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



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

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Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
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RMT.TEEKAA RAMAN, J.



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