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Crl.O.P.No.19012 of 2023

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and Crl.M.P.No.17993 of 2023

C.V.KARTHIKEYAN,J.

The petitioner is an accused in Crime No.4 of 2023, registered by the respondent police for the offences punishable under Sections 9(m) r/w 10 of POCSO Act. Subsequent to investigation, final report had been filed and the same had been taken cognizance as Spl.S.C.No.225 of 2023 and is pending trial before the Special Court for Exclusive Trial of Cases under POCSO, Chennai.

2.It is the contention of the learned counsel for the petitioner that he had obtained information through Right to Information Act, regarding the details of the time when the child would go and leave the School and the time when the petitioner was actually arrested and the time when he was produced before the Magistrate after arrest and the time when the confession was recorded. It is stated that the occurrence had, according to the defacto complainant, taken place at 4.00 p.m. But it is stated that since the petitioner had obtained information under RTI Act, they had changed the time.

3.It is also stated that since the petitioner had complained about



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the Investigating Officer, the Investigating Officer had also been transferred to the Armed Reserve Section.

4.The learned counsel for the petitioner stated that the petitioner had been in custody for a considerable period of time. It is also stated that there was a private dispute over parking of vehicles and therefore, stated that the incident had never happened and that the complaint is motivated.

5.The learned counsel on behalf of the defacto complainant had also entered appearance and had filed an intervening application.

6.The learned counsel for the defacto complainant/intervenor disputed all the statements and stated that the petitioner herein had been abusing the child continuously for over two years. It is stated that she did not have any opportunity to vent her grievances since she was brought up only by her aunt and her father was addicted to alcohol, and she could not come out with the facts.

7.It is stated that on that particular date, when the child was in



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the open terrace, the accused had come over there and asked her to remove her school uniform and had committed the offences for which charges under Sections 9(m) & 10 of POCSO Act, had been framed.

8.The learned counsel for the defacto complainant/intervenor also stated that the child is now still facing threat from the petitioner herein and raised serious objections for grant of any relief to the petitioner herein.

9.On the side of the respondent, the learned Government Advocate (Crl. Side) stated that the trial could not even start since the petitioner had been going around obtaining informations under the RTI Act. It is stated that statement under Section 164(5) of Cr.P.C of the child alone had been recorded and in that particular statement, she had confirmed and reiterated the allegations as stated in the complaint and on the basis of which, FIR was registered. It is also contended that the child is yet to be examined as a witness before the Court, and that at this juncture, bail should not to be granted by this Court.



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10.I have carefully considered the arguments advanced.

11.At this stage, the only issue is whether to grant bail to the petitioner or not. The Court is taking cognizance of the offence and not the offender. The offences are under Sections 9(m) & 10 of the POCSO Act. The age of the petitioner is 57 years. The victim child is aged 12 years. She is studying 8th standard in a School.

12.It is to be noted that she has to be categorized as a vulnerable witness. Protection should be given to her to tender evidence out of free will and in an atmosphere, which is conducive for her to tender evidence. The statement under Section 164(5) of Cr.P.C., of the victim child had been recorded and had also been forwarded to the Court and a reading of the same shows that she had clearly stated about the nature of the offence which according to her had been committed.

13.It is therefore necessary that the Court should come to her assistance before she deposes evidence during the course of trial. The trial had been protracted, according to the respondent/prosecution only



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because the accused had sought information under RTI Act and wanted to place all the materials before the trial Court. Even before this Court, materials collected under RTI Act, had been submitted. But this Court is not here to examine the materials produced by the petitioner. That is the prerogative of the trial Court. All the issues collected through RTI Act can be placed before the trial Court for proper appreciation. But, at this stage for grant of bail, the only consideration is whether there is possibility of the witness being threatened and whether the witness would be able to tender evidence out of free and voluntary will.

14. That is not possible taking into consideration the fact that, according to the learned counsel for the defacto complainant, the offence had been occurring for the past two years and the victim child does not have the effective support of her father, who unfortunately is addicted to alcohol.

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15.In view of all these facts, at this stage since the evidence of the victim child had not been recorded, I am not inclined to grant bail. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected intervening petition is also closed.

09.11.2023

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