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Crl.O.P.No.22305 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED :03.10.2023

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.22305 of 2023

Ananthi Ammal

.. Petitioner/Accused-1

/versus/

The State represented by
Inspector of Police,
H-4, Kortukkupet Police Station,
Chennai.

.. Respondent/Complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to set aside the docket order and issue a director to examine Additional defence witnesses as mentioned in the petitioner before the Special Court POCSO cases Chennai dated 19.09.2023 to secure the ends of justice.

For Petitioner :Mr.R.Sankarasubbu

For Respondent :Mr.S.Udaya Kumar
Govt.Advocate (Crl.Side)

ORDER

The petitioner, who is the accused in POCSO case, did not co-operate the trial. Hence, the trial Court was constrained to cancel the bail. Challenging the order cancelling the bail, the petitioner approached this Court seeking prayer to



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set aside the order cancelling the bail.

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2. This Court vide order dated 18.08.2023 after hearing the learned counsels, set aside the order cancelling the bail and also on the affidavit filed by the petitioner, permitted her to examine 10 named witnesses as defence witnesses and also directed that the said examination of witnesses must be completed within three weeks and granted another three weeks to dispose of the case. In such circumstances, the petitioner herein had examined eight, out of 10 witnesses and thereafter, taken out an application seeking permission to examine six additional witnesses. The trial Court has returned the application stating that as per the direction of the Court, the accused was permitted to examine only the named defence witnesses within a period of 3 weeks and thereafter, to complete the trial another period of three more weeks. Out of 10 named witnesses, eight witnesses had been examined as DW-12 to DW-19 and thereafter, the application to examine for six additional witnesses cannot be entertained.



3. The learned counsel appearing for the petitioner, being aggrieved submitted that the petitioner being an accused has every right to put forth their defence case and their right cannot be curtail. Further more, six additional witnesses were not able to trace, when the petitioner moved the High Court earlier and therefore, their names were not furnished. Out of 10 witnesses, within the time frame the petitioner has meticulously marshal eight witnesses and they have been examined. Due to not sitting of the Court, on few days the other two witnesses could not be examined. Meanwhile, the petitioner/accused was able to trace the other six witnesses, who will be useful to thrown light about the case the examination of these witnesses is essential to meet the ends of justice. The learned counsel also submitted that under Section 311 of Cr.P.C., the Court has power to summon any person and examine them as witness at any stage.

4. The learned Government Advocate (CrI.Side) submitted that the matter arising under POCSO Act and pending since 2016. In spite of the petitioner given opportunity to marshal the defence witness and she already examined 19 witnesses, contrary to his undertaking, the petitioner after expiry of three weeks time, has taken out the application to examine six more



additional witnesses on the side of the defence, which has been rightly declined by the trial Court.

5. Section 311 of Cr.P.C., empowers the Court to summon and examine witness at any stage, it is the case where the accused wants to marshal witnesses in defence. There is no doubt that the accused have the right to seek leave of the Court to examine the witnesses. However, it shall not be at the cost of fair and speedy trial. It is the case of the year 2016, wherein a serious offence under POCSO Act has been alleged against the petitioner and the other accused, who were running orphanage and the victims are the inmates.

6. It is now learnt from the learned Government Advocate (Crl.Side) that the trial Court has adjourned the case to 06.10.2023 for pronouncing judgment.

7. The learned counsel appearing for the petitioner submitted that the matter was posted for argument today and due to paucity of time and the pendency of this application, the learned counsel was not able to appear before the trial Court and put forth his argument before the trial Court.



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8. From the records, this Court finds that when the request to examine 10 defence witnesses on behalf of the petitioner was declined and the trial Court took exception that such application was for protracting the trial and order cancelling of bail, the High Court intervened the order of cancellation of bail and permitted the petitioner to marshal his witness within the time fixed. The petitioner had explored the opportunity and had examined eight, out of 10 witnesses. The learned counsel contends that since for few days, the Presiding Officer was not sitting, he was not able to examine other witnesses. However, the application filed before the trial Court is only to permit the petitioner to examine six additional witnesses. There is no whisper in the said petition, why the remaining two witnesses not examined and whether the petitioner has any intention to examine the left over two witnesses. It is an obvious fact that in a case of this nature testing the memory of the witness after seven or eight years may not be much assistance and the accused cannot in piecemeal seek indulgence of the Court to marshal his witness. Further, it is not the quantity of witnesses but the quality of the witness is relevant. Therefore, the Court finds no appropriate reason available to entertain this petition. Hence, the order of the trial Court is upheld. Accordingly, this Criminal Original Petition is dismissed.



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9. While reckoning three weeks time granted for completion of trial, the trial Court may exclude the days on which there was no Court sitting and pass orders within that period. The learned counsel appearing for the petitioner is permitted to file his written argument on or before 05.10.2023 and if such written argument is filed, the trial Court is directed to receive the written argument of the defence counsel, consider it and pass judgment, on merits and in accordance with law.

03.10.2023

Index:yes/no

Speaking order/non speaking order
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Issue order copy on 04.10.2023

To:

- 1.The Special Court for POCSO Act, Chennai.
- 2.The Inspector of Police, H-4, Korukkupet Police Station, Chennai.
- 3.The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN, J.



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