



Crl.O.P.No.22744 of 2023

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C.V.KARTHIKEYAN, J.

The petitioner/first accused, who apprehends arrest at the hands of the respondent police for the offence punishable under Sections 8 & 12 of the Protection of Children against Sexual Offences Act, 2012 and under Section 75 of the Juvenile Justice Care and Protection Act, 2015 in Crime No.3 of 2023, seeks anticipatory bail.

2. It must be mentioned that the petitioner is the maternal uncle of the victim child and the second accused is the mother of the victim child. The defacto complainant is the father of the victim child. There had been earlier judicial proceedings. One of them was a Habeas Corpus Petition relating to the custody of the child. The other was a quash petition filed by both the accused herein seeking interference with the First Information Report registered.



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3. It is contended on behalf of the petitioner by the learned Senior Counsel that though the complaint was given on 23.12.2022, the first information report was registered only much later on 30.03.2023. It had been stated that the alleged incidents were not aggravated sexual assault as against the victim child but only improper touch allegedly by the petitioner/first accused against the victim child. It is therefore stated that the entire issue will have to be examined only on the basis of evidence. It had also been stated that such incidents are alleged to have been taken place in the residence of the petitioner herein. It is also contended that one such incident is alleged to have happened on 23.12.2022.

4. The learned Senior Counsel had placed reliance on the video recording taken at the time when the victim child has allegedly come over to the residence of the petitioner herein to take return of her articles. This particular video recording was examined during the application filed to quash the First Information Report and the learned Judge had recorded that he had also seen the said video recording and had seen that the



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victim child had come along with a person, who was wearing a safari suit and articles were taken and there was only a conversation and there was no visual evidence of the alleged incident as stated by the victim girl.

5. Attention is also drawn to the further observations in the order in the petition seeking to quash the First Information Report wherein, the learned Judge had directed that the investigation should be monitored by a police officer holding a higher rank. It is also stated that the defacto complainant / father of the victim child is a police official and there was therefore, every possibility of influence being exercised against the petitioner herein.

6. The learned Senior Counsel also stated that it had been observed during the earlier proceedings / quash proceedings that the investigation had been practically completed and that a draft final report had also been forwarded to the authorities for final vetting and before being filed before the concerned jurisdictional Court. The learned Senior Counsel in those circumstances stated that there was no possibility of the



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petitioner either tampering the evidence already gathered or of absconding from the judicial process. It is therefore urged that the anticipatory bail should be granted to the petitioner herein. It was also stated that so far as the second accused is concerned/ mother of the victim child, anticipatory bail had been granted.

7. On the other hand, the learned Government Advocate (Crl.Side) however stated that though substantial portion of the investigation has been completed, interrogation of the petitioner is required to find out the veracity of the various allegations stated in the complaint. It is also contended that the victim child had given a statement which was recorded under Section 164 of the Code of Criminal Procedure where she had stated in explicit terms the allegations made by her in the complaint. It was pointed out that the petitioner had, on various occasions inappropriately touched her in her private parts and had also laid over her in the bed. It is therefore contended that to determine all these facts, interrogation of the petitioner herein is required.

8. It was also contended by the learned Government Advocate



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(Crl.Side) that it was not on just one particular date when the incidents happened but they were spread over a series of days and therefore, to examine in detail, all these aspects, the presence of the petitioner before the Investigating Agency is required and therefore, favourable consideration of the application had been very seriously objected to by the learned Government Advocate (Crl.Side).

9. There is also representation on behalf of the defacto complainant.

10. The learned Senior Counsel stated that in so far as the second accused/mother of the victim child is concerned, taking into consideration her status, serious objections were not raised for grant of anticipatory bail, but with respect to the petitioner herein, however, objections are raised. It was stated that the petitioner is the maternal uncle of the victim child and taking advantage of that particular relationship, he had misbehaved and committed the offences as stated in the First Information Report. It is also stated that the victim child had



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been produced before the Division Bench which examined the Habeas Corpus Petition and on hearing her version, custody was handed over to the father and the learned Senior Counsel stated that it was a very significant order passed, not handing over custody of the victim child to the second accused / mother. It is also contended by the learned Senior Counsel that there has been a series of offences which had been incidental to what had been complained and stated that the entire issue will have to be investigated and therefore, raised very serious objections for grant of anticipatory bail.

11. I have carefully considered the arguments advanced and examined the records available on record.

12. This is a case where a young child, had given a complaint against her own mother. In her complaint, she had very specifically stated that the brother of her mother / the petitioner herein / first accused had improperly behaved with her and had touched her private parts and had laid over her in the bed. It is also seen that the defacto complainant



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who had lodged the complaint was the father. The victim child had been examined by the Magistrate and her statement had been recorded and she had reiterated the statements made in the complaint and as recorded in the First Information Report.

13. The contention that the mother had been granted anticipatory bail would not take the petitioner anywhere, since the allegations of improper touch was specific against the petitioner herein and the alleged incidents had happened in the residence of the petitioner. So far as the video recording is concerned, though there were several observations made by the learned Judge, who examined the issue while hearing the application seeking to quash the First Information Report, it is to be noted that any material object particularly any video recording can be subjected to tests of admissibility, relevancy, proof and genuinely only during the course of trial. The evidence will have to be examined whether the video had been presented before the Investigating Officer as originally recorded or whether there had been tampering of the mobile phone. Though a Certificate under Section 65(B) would be produced still, there



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has got examination of the mobile phone to find out the actual recording and whether there has been any interference with such recording.

14. During the course of arguments advanced during the quash petition, it is seen that the learned Senior Counsel appearing on behalf of the petitioner had stated that the mobile phone could be submitted to Truth Labs for its verification. But it would require the investigation agency to subject the mobile phone to the Forensic Laboratory as authorised. The result of any Private laboratory, whatever be the reputation would always be viewed with skewed eyes.

15. It is also seen that though it could be charged that the complaint is motivated, though the complaint had been given by the father, the primary evidence would be that of the victim child and the basis for such evidence would be the statement recorded under Section 164 Cr.P.C.

16. The investigation has to be proceeded with, since it is the welfare of the victim child alone which has to be taken into consideration.



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It is not the welfare of either father, the mother or the uncle but the welfare of the child. Her tears will have to be wiped out and to that end, trial process is required. The quash Petition had also been dismissed which would indicate that trial will have to be proceeded with.

17. Before proceeding for trial, the respondents should file the final report after completing investigation. When there are specific allegations against the petitioner herein in the statement recorded under Section 164 Cr.P.C., then to verify those statements, interrogation of the petitioner is required. The petitioner cannot hide behind a screen and claim innocence and ignorance and seek indulgence.

18. It is also pointed out by the learned Senior Counsel for the petitioner that the petitioner had always co-operated during the investigation whenever notice under Section 41-A of Cr.P.C., had been issued to him. But that does not take the petitioner anywhere as, before filing of the final report, if interrogation is required, it is required. This Court is not the agency to find out whether investigation had been



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properly conducted. Already, there is a Senior Police Officer nominated to monitor the investigation and I am confident that necessary directions will be given to the Investigating Officer regarding the path through which the investigation should travel.

19. At this stage, taking into consideration the seriousness of the offences, even though the learned Senior Counsel had urged that investigation had been practically completed and that the final report is also practically ready, still, I would reject the Petition seeking Anticipatory Bail particularly keeping in mind the welfare of the victim child. She still has to tender evidence before the Court.

20. Hence, this Criminal Original Petition stands dismissed.

10.10.2023

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