



Crl.O.P.No.24096 of 2023

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C.V.KARTHIKEYAN, J.

The petitioner, who was arrested and remanded to judicial custody on 24.05.2023 for the offence punishable under Section 506(2) IPC and Section 6 of Protection of Child from Sexual Offences Act, 2012 in Crime No.03 of 2023 on the file of the respondent police, seeks bail.

2.The petitioner/accused is aged about 66 years and the victim child was aged 16 years. The only argument advanced by the learned counsel for the petitioner is that, though a final report had been filed after investigation by the respondent, the same had not been taken cognizance by the trial Court since, the DNA report is awaited. It is also contended that the learned Trial Judge had stated that statement under Section 164 Cr.P.C had been recorded and it is contended that could be sufficient to take cognizance and that the DNA report is only an adjunct to the final report. It is also contended that the learned Trial Judge had stated that the laboratories are overloaded and the DNA test samples have been forwarded to the laboratories.



3. There are two aspects in this particular issue. The first one is the statement of the victim child under Section 164 Cr.P.C. That is a preliminary step to be taken for the investigation to move forward on the basis of the said statement. Thereafter, on the basis of the said statement when the investigation moves forward, and in this particular case, since the victim child had been impregnated, the DNA test will have to be taken not only of the fetus but also the accused person to determine paternity. This comes under the second stage of investigation.

4. In the present case, the DNA sample of the petitioner had been taken for comparison with the sample taken from the fetus, it had been forwarded to the laboratory. However, other portions of the investigation has been completed and therefore, the final report in that particular form had already been filed before the trial Court. What has to be added is the result of the tests from the laboratory. This could go either way. It could confirm the offence or it could also state that the petitioner is not responsible for the impregnating the child. Depending on that, the nature of charge would alter but still a basic charge under other



provisions of POCSO Act and 506(ii) IPC can still be laid against the petitioner herein. Therefore, the arguments advanced by the learned counsel for the petitioner does not taken him anywhere.

5.The learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court reported in **2023 SCC OnLine SC 502, Ritu Chhabaria Vs. Union of India and Others**. It must be stated that, the offence involved in that particular case was Section 120(B) IPC read with Section 420 IPC along with Sections 7, 12 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. In that particular case, investigation had been changed to a new Investigating Officer and therefore what was called a preliminary charge sheet alone was filed. The Hon'ble Supreme Court had frowned upon that particular exercise and stated that a preliminary charge sheet without conclusion had been filed only to scuttle the right of the petitioner to get statutory bail. Therefore, it was under those circumstances, the Hon'ble Supreme Court had held that the final report should either be complete in its entirety or not and that a partial final report should not be filed.

6.In the present case, so far as the investigation is concerned, the



Investigation Officer had completed the investigation and final report had been filed. The investigation consists of recording of statement of witnesses under Section 161 Cr.P.C., recording the statement of the victim child under Section 164 Cr.P.C., and other materials so far as the offences are concerned. One aspect is about the report of the DNA test. The Investigation Officer should take the DNA sample. His responsibility starts and ends with that. He has done it. He has discharged his duty so far as taking the sample is concerned. He has also forwarded the said sample for further testing to the laboratory.

7. When the report of the laboratory is forwarded, the nature of the charge alone would differ, but still the charge would lie against the petitioner on the basis of the statement already recorded, materials gathered and the statement under Section 164 Cr.P.C., of the victim child. It is not as if the entire charges would be wiped away against the petitioner. It is only the correct provision of law alone, which would change depending on the nature of DNA report. Therefore, the arguments advanced by the learned counsel for the petitioner is rejected and the judgment relied on by the learned counsel for the petitioner would not



applicable to the facts of this case.

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8.In view of the above observations, this Court is not inclined to grant bail to the petitioner. Accordingly, this criminal original petition stands dismissed.

18.10.2023

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