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Crl.O.P.No.4861 of 2024

C.V.KARTHIKEYAN,J.

The petitioner/accused in Crime No.7 of 2023, originally registered under Section 8 of POCSO Act and later altered to Section 4 of POCSO Act and Section 366 of IPC, seeks bail.

2.It is stated that the occurrence had taken place on 16.08.2023 and it is alleged by the learned counsel for the petitioner that it was informed on 16.10.2023. The petitioner had been remanded to judicial custody on 18.10.2023. The petitioner had simultaneously filed an application seeking discharge before the Trial Court.

3.The learned counsel for the petitioner was repeatedly informed that he should not invite any observations from this Court on the materials available. But however, the learned counsel for the petitioner stated that this is an application seeking bail and took the Court through the records. The records revealed that the victim child had given her statement under Section 164(5) of



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Cr.P.C., and it also reveals about the nature of offence which had been committed which is penetrative sexual assault.

4.The one further point which is stated is that there were no injuries on the victim child. But it is also pointed out by the Government Advocate (Crl. Side) that medical examination had been conducted and it had been determined that hymen has been ruptured. This clearly shows that the victim was sexually penetratively assaulted. This is a definite observation of this Court. Therefore, the ground that there has been an alteration of report deliberately by the Investigation Agency has to be rejected as taken only for the purpose of this case.

5.Thereafter, the learned counsel for the petitioner pointed that the father of the petitioner is suffering from Cancer and and on that ground also sought bail. That is not a ground to be considered, as it has to be weighed with the vulnerability of the victim child. If the petitioner is released on bail, naturally she will not come forward with confidence to tender evidence before the Court. The Court is only concerned with the welfare of the victim child and to provide



her opportunity to tender evidence with confidence and state the actual facts and about her sufferings.

6.It is also pointed out that in the statement under Section 164(5) of Cr.P.C., recorded from the victim she had not stated anything about sexual offence. That statement would now pale into insignificant as the victim child would now be directly examined in the Court and her evidence would be recorded before the Court. That would be the basis on which all the evidence would be analyzed by the learned Sessions Judge. The petitioner herein would have every opportunity to cross-examine and test such evidence.

7.In view of all these facts, since the offence under Section 4 of POCSO Act is made out on the basis of the records available, I am not inclined to grant bail to the petitioner herein. Accordingly, this Criminal Original Petition is dismissed.

07.03.2024

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