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Crl. O.P.No.26039 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP.No.26039 of 2024

S.Samboornam

.. Petitioner

Vs.

State

Rep.by the Inspector of Police,
Tiruchengode, Town Police Station,
Tiruchengode.

(Cr.No.180 of 2024)

.. Respondent

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, to direct the Fast Track Mahila Court at Namakkal to receive and number the bail petition filed under Section 483 of BNSS Act in unnumbered the Criminal Miscellaneous Petition in Cr.No.180 of 2024 pending on the file of the respondent within a time frame as stipulated by this Hon'ble Court.

For Petitioner : Mr.Deepan Uday

For Respondent : Mr.S.Udaya Kumar
Government Advocate

ORDER



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WEB COPY The petitioner herein is the second accused in Cr.No.180 of 2024.

The allegations found in the complaint is that one Senthil Kumar who is the son of the petitioner had attacked the minor girl Sashmitha, daughter of Prabhu with knife on her neck and caused grievous injury, when that was questioned by the defacto complainant, he has attacked them also. As far as the petitioner is concerned, being the mother of the said Senthil Kumar, she has tried to conceal the injury caused to Sashmitha and aided her son. Initially, the case was registered under Section 109(1), 238 and 49 of BNS Act, 2023. Later, the Investigating Officer has thought fit to alter the charge to Sections 109(1), 238 and 49 BNS Act r/w 9(m) r/w 10 of POCSO Act 2012 r/w 103 of BNS Act.

2. The petitioner filed bail petition before the District and Sessions Court, Namakkal before alteration of the charge. However, knowing the fact that pending bail petition, the police has altered the report by including POCSO offence, for want of jurisdiction, the petitioner has withdrawn the bail petition and moved the Fast Track Mahila Court at Namakkal which is the designated Court for dealing with POCSO offences. However, the bail petition was returned on 26.09.2024 with an endorsement that the FIR and the connected records were returned to



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Judicial Magistrate Court, Thiruchengode.

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3. The learned Government Advocate (Crl.Side) appearing for the respondent police on getting instructions from the Investigating Officer submits that the Mahila Court has perused the papers, found that the offence under Section POCSO Act is not attracted and therefore returned the paper to the Judicial Magistrate. As a consequence, the bail petition filed by the petitioner not entertained.

4. It is to be taken note that the investigation of the crime is not yet completed. The petitioner was arrested on 27.07.2024 primarily for aiding the prime accused and concealing the crime. She is in prison till date. Her bail petition could not be taken up due to the fact that the Investigating Officer has altered the report and added POCSO offence. From the point of view of the Investigating Officer, POCSO offence is attracted in this case. Whereas the Special Court for POCSO offences, not satisfied with the altered report had returned the papers back to the Judicial Magistrate.

5. In the said circumstances, the forum which could entertain the bail petition of the petitioner has to be ascertained to enable the petitioner herein to seek redressal.

6. On perusing the complaint and the altered report by including



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POCSO offence, in view of this Court since POCSO Court has returned the papers back to Judicial Magistrate, it is appropriate for the Principal Sessions Judge, Namakkal to consider the bail petition and decide it on merits.

7. Accordingly, this Criminal Original Petition is disposed of directing the petitioner herein to file appropriate petition for bail before the District and Sessions Court, Namakkal. On such presentation of the bail petition, the same may be entertained and decided in accordance with law.

8. The learned Government Advocate (Crl.Side) submits that the matter is investigated by Thiruchengode Rural Police Station and not Town Police. Hence, a copy of this order be marked to Thiruchengode Rural Police.

22.10.2024

Vv

Note: Issue Order Copy today itself.

To



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1. The Inspector of Police,
Tiruchengode, Town Police Station,
Tiruchengode.

2. The Inspector of Police,
Thiruchengode Rural Police
Thiruchengode.

3. The Public Prosecutor,
High Court of Madras.

Dr.G.JAYACHANDRAN,J.



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