



Crl.A.No.1459 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.A.No.1459 of 2024

Prabakaran ... Appellant/sole Accused

Vs.

1.State Represented by;
The Deputy Superintendent of Police,
Thirupathur Town Police Station,
Thirupathur.

2. The Inspector of Police,
Thirupathur Town Police Station,
Thirupathur.

3.D.Subasri ... Respondents/Complainants

PRAYER: Criminal Appeal filed under Section 14(a)(2) of the Scheduled Castes and Scheduled Tribes, 1989, to set aside the order passed by the learned Sessions Judge, Special Court for exclusive Trial of Cases under POCSO Act, Vellore, in Crl.M.P.No.1418 of 2024 in Spl.S.C.No.110 of 2023 dated 08.10.2024 and enlarge the appellant on bail.

For Appellant : Ms.E.Thiyaga

For R1 & R2 : Dr.C.E.Pratap
Government Advocate (Crl. Side)

For R3 : Mr.V.Perarasu



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Legal Aid Counsel

JUDGMENT

This appeal has been filed challenging the dismissal of the bail application filed by the appellant.

2. The appellant is facing trial for the offences under Sections 506(i) of the IPC, 5(l), 5(n), 5(j)(ii), 6 of POCSO Act, 2012 r/w 3(1)(w)(i), 3(2)(v) of SC/ST (POA) Act in Spl.S.C.No.110 of 2023 on the file of the learned Sessions Judge, Special Court for exclusive Trial of Cases under POCSO Act, Vellore.

3. The allegation against the appellant is that, he is the uncle of the victim girl i.e., he is the sister's husband of the victim's mother; that on 05.03.2023 at night, when the victim along with her brother stayed in the house of her aunt, the wife of the appellant, the appellant came near the victim and took her outside the room and removed the dress and committed penetrative sexual assault and thereafter, threatened her with dire consequences; that she did not report the incident to anybody due to fear and since she suffered from stomach ache, she told her mother on 01.06.2023



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about the occurrence and a scan was taken and she was found to be pregnant.

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4. The appellant filed a bail application before the trial Court and the same was dismissed by the learned Sessions Judge, Special Court for exclusive Trial of Cases under POCSO Act, Vellore, by order dated 08.10.2024 in Crl.M.P.No.1418 of 2024, on the ground that seven witnesses have been examined and considering the gravity of the offence, the appellant is not entitled to bail.

5. Though the victim/3rd respondent was served, none had entered appearance. Hence, this Court appointed Mr.V.Perarasu, as legal aid counsel for the 3rd respondent/victim.

6. Heard Ms.E.Thiyaga, learned counsel for the appellant, learned Government Advocate (Crl.Side) appearing for the State/respondents 1 and 2 and Mr.V.Perarasu, learned counsel for the 3rd respondent/victim.



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7. The learned counsel for the appellant would submit that the appellant is in custody from 04.06.2023; that his further custody is not necessary for the purpose of investigation; that the case against him is false; and that he would abide by any stringent condition imposed for grant of bail.

8.(i) The learned Government Advocate (Crl.Side) appearing for the State/respondents 1 and 2, on instructions would submit that the accused/appellant had committed a serious offence; seven witnesses have already been examined including the victim and the mother of the victim; that totally twenty-two witnesses have been cited by the prosecution; and hence, the appeal may be dismissed.

(ii) To a specific query put by this Court as to whether the foetus of the victim was sent for DNA analysis, the learned Government Advocate would submit that it was not sent for examination.



9. Mr.V.Perarasu, learned counsel for the 3rd respondent/victim submitted that the offence committed by the appellant is grave in nature; that the victim became pregnant due to the act of the appellant; and that considering the nature of the relationship, this Court may dismiss the appeal, since the appellant is likely to tamper with the witnesses.

10. Considered the rival submissions and perused the materials available on record.

11. The appellant was arrested on the complaint given by the defacto complainant on 04.06.2023. The alleged occurrence is said to have been taken place in the month of March, 2023. The victim had not reported about the occurrence to anybody for about three months. Seven witnesses have already been examined by the prosecution so far, including the victim. The appellant cannot be kept in custody for an indefinite period, as he has a right to defend himself effectively in the trial.

12. Therefore, considering the period of incarceration, the fact that the victim has already been examined by the trial Court and considering the



other facts and circumstances, this Court is of the view that the appellant can be enlarged on bail, on conditions.

13. Accordingly, the appellant/accused is ordered to be released on bail subject to the following conditions:

(i) The appellant shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for exclusive Trial of Cases under POCSO Act, Vellore;

(ii) The appellant and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity;

(iii) the appellant shall appear before the trial Court on all hearings;

(iv) the respondent police is directed to ensure that there is no threat to the life and safety of the de-facto complainant. In the event of any threat,



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appropriate steps to be taken.

(v)the appellant shall not commit any offences of similar nature;

(vi)the appellant shall not abscond either during investigation or trial;

(vii)the appellant shall not tamper with evidence or witness either during investigation or trial;

(viii)on breach of any of the aforesaid conditions, the learned Sessions Judge/Trial Court is entitled to take appropriate action against the appellant in accordance with law as if the conditions have been imposed and the appellant released on bail by the learned Sessions Judge/Trial Court himself as laid down by the Hon'ble Supreme Court in *P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]*;

(ix)if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.



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14. In view of the above, the impugned order, dated 08.10.2024 in Crl.M.P.No.1418 of 2024 passed by the learned Sessions Judge, Special Court for exclusive Trial of Cases under POCSO Act, Vellore, is set aside and the Criminal Appeal is allowed.

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Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

Note : The District Legal Services Authority is directed to pay the scheduled fees to Mr.V.Perarasu, legal-aid counsel appointed by this Court, to assist this Court on behalf of the third respondent/victim.

Issue Order Copy by 16.12.2024.

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SUNDER MOHAN, J.

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Copy to:

1. The Sessions Judge,
Special Court for exclusive Trial of Cases under POCSO Act,
Vellore.
2. The Deputy Superintendent of Police,
Thirupathur Town Police Station,
Thirupathur.
3. The Inspector of Police,
Thirupathur Town Police Station,
Thirupathur.
4. The Superintendent,
Central Prison, Vellore.
5. The Public Prosecutor,
High Court, Madras.

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