



Crl.O.P.No.28945 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 offences punishable under Section 506 of IPC and Section 3 of POCSO Act in Crime No.3 of 2023, seeks bail.

2.An earlier application seeking bail had been dismissed on 18.10.2023 in Crl.O.P.No.24096 of 2023.

3.It is contended by the learned counsel for the petitioner that, on that particular date, the respondent had stated that DNA sample of the petitioner had been taken for comparing with the sample taken from the foetus and that had been forwarded to the laboratory. It is now pointed out in the counter affidavit that the samples had been forwarded to the laboratory only on 17.11.2023, after that particular order dated 18.10.2023 dismissing the earlier bail application.

4.But the fact remains that the DNA samples are now under



testing by the laboratory. It had been earlier observed also that the result of the laboratory is extremely crucial to take a decision on the nature of offences for which the final report will have to be taken cognizance. The final report had not been taken cognizance because the DNA report has not yet been obtained.

5.The learned counsel for the petitioner stated that even in the absence of the DNA report, the Court can be directed to take cognizance of the final report and stated that the petitioner would face trial without default. It is also stated that the petitioner would stay away from this particular area and would appear before the Court on receipt of summons.

6.It is a case where the petitioner is aged about 66 years and the victim girl is aged about 15 years and in the 164(5) Cr.P.C., statement of the victim, she had stated about the continuous sexual impregnation done by the petitioner herein. It is an aggravated sexual offence. Even on the previous occasion the right of the victim had been examined. She is placed in a very vulnerable situation. The petitioner will have to await her examination and cross-examination to be completed. She must be given necessary opportunity to depose without fear and without being



influenced by the petitioner herein or without any possibility of there being influence exercised by the petitioner herein. The petitioner has to await the result of the DNA report.

7.The learned counsel for the petitioner also stated that the statement recorded under Section 164(5) Cr.P.C., is only a glorified extent of the statement recorded under Section 161 Cr.P.C.

8.To a little extent that may be correct but one crucial distinguishing factor is that the statement under Section 164(5) Cr.P.C., is recorded by the learned Magistrate and under the POCSO Act, that particular statement itself could also taken as an evidence in chief.

9.In view of that particular fact, though charge sheet has been filed, the result of DNA report has not yet been received and therefore there is no change in circumstances from the previous occasion when the earlier bail petition was dismissed, I am not inclined to grant bail to the petitioner. Accordingly, this Criminal Original Petition stands dismissed.

22.01.2024

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