



Crl.O.P.Nos.262 & 1194 of 2024

WEB C **C.V.KARTHIKEYAN,J.**

The second accused has filed Crl.O.P.No.1194 of 2024 and the fourth accused has filed Crl.O.P.No.262 of 2024, both in Crime No.6 of 2023, registered for the offences under Sections 376(D) and 506(1) of IPC r/w Section 5(g) and 6 of POCSO Act, 2012, seek bail. A2 had been remanded to custody on 02.07.2023 and A4 had remanded to custody on 01.07.2023.

2.It is the case of the prosecution that there are totally 11 accused who are alleged to have committed the offence under Section 376(D), 506(i) of IPC r/w Section 5(g) and 6 of POCSO Act, as against three victim children.

3.Even before proceeding with the facts of the case it must be stated that Section 5(g) of POCSO Act, deals with gang rape and explanation to the said provision states that even when more than one person are alleged to have committed the offence of penetrative sexual assault, then each one of them are liable for the said offence. There cannot be segregation of the role of any one of the accused and each one of the accused will be held liable for the commission



of the said offence. Therefore, the case of A2 and A4 cannot be separated from any of the accused and all the accused will have to face trial for the commission of the offence under Section 5(g) of POCSO Act.

4.The learned counsel for the petitioner/A4 had raised a preliminary objection stating that one of the victim child was born on 12.05.2005 and the occurrence is said to have taken place on 26.06.2023 and therefore, she had crossed the age of 18 as on the date of offence. This is only a minor issue and it will only charge the provision of law from POCSO Act to Indian Penal Code offence. The offence still holds. The offence of gang rape would still hold. There cannot be any segregation of individual acts of each one of the accused and all the accused would be equally held liable for the commission of the said offence and charges will have to be framed not only under POCSO Act but now since it is stated that one of the victim child is aged more than 18 years, also under relevant provision of the Indian Penal Code.

5.This Court places its gratitude to the learned counsel having brought to the notice of this Court the fact of the age of that particular child since at the



earliest instance the trial Court can make necessary alteration and frame appropriate charges instead of this fact being brought at the conclusion of trial which would vitiate the entire trial process. A direction is therefore given to the Trial Court namely, the Special Court for POCSO Act Cases, Chennai, to examine the age of the three victim children and frame charges accordingly. If one of the victim child had crossed the age of 18, according to the relevant provision of IPC and the provisions under POCSO Act with respect to the other victim children.

6.The statement under Section 164 Cr.P.C., of the three victim children had been forwarded to this Court by the learned Government Advocate (Crl. Side) for the respondent and a reading of the same, whether they had crossed the age of 18 or whether they are less than the age of 18, shows the pathetic situation in which they had been put to. One after another, the accused had practically forced themselves on each one of the three victim children and had committed the offence of aggravated penetrative sexual offence. The victims under extreme stress, when one after another the accused forced themselves. They would not be in a position to know the name and to know the address and



identity of the accused. They would be in a state of shock. Therefore, when

Section 5(g) of POCSO or its equivalent provisions under IPC are also attracted, it is not required that the victims should name each one of the accused who had committed the offence but only state that they had repeatedly committed the offence on them, even though they had protested. Vulnerability of the children will have to be kept in mind.

7.I am not examining the facts of the case in any more but I am extremely satisfied that this is a case where protection will have to be given to the victims who are vulnerable and a direction is given to the learned Special Court for POCSO Act Cases, Chennai, to take additional care under the Witness Protection Scheme, 2018 and ensure them that all the victims are given necessary confidence to depose evidence before the Court during the course of trial. All the other accused are in custody. These accused cannot be granted any special privilege. This Criminal Original Petition is dismissed. Whatever be the observations in the earlier order, bail cannot be granted till completion of trial.

01.02.2024

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