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Crl.O.P.No.2325 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2025

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.O.P.No.2325 of 2025

Govinda Sarki
(Presently as Prisoner [Prisoner ID No.519326]
in Central Prison, Puzhal, Chennai) ... Petitioner

Vs.

State Represented by
The Inspector of Police
W-7, All Women Police Station,
Anna Nagar, Chennai – 600 040,
Crime No.201 of 2023. ... Respondent

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to direct the Special Court for exclusive trial of POCSO Court for marking the photo as Exhibit in Special S.C.No.198 of 2023 by the petitioner/accused by setting aside the rejection of the trial Court in D.W.2 deposition dated 03.01.2025.

For Petitioner : Mr.S.Shujath
For Respondents : Mr.S.Vinoth Kumar
Government Advocate (Crl.Side)



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ORDER

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2. The case of the prosecution is that the petitioner/accused induced the victim, who is aged about 13 years under the false pretext of marrying her and had committed aggravated penetrative sexual assault by keeping her with him for three days. The respondent-Police based on the complaint given by the parents of the victim, registered a case in Crime No.201 of 2023 for Girl Missing and subsequently the same was altered to Sections 366 (A) IPC @ Section 366(A) IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 [hereinafter 'POCSO Act'] @ Section 366(A) IPC and Section 6 of POCSO Act. On completion of the investigation, the respondent-police filed a charge sheet before the learned Sessions Judge, Special Court for exclusive trial of POCSO Act, Chennai and the same was taken on file in Spl.S.C.No.198 of 2023. Now the petitioner is confined in Central Prison, Puzhal, Chennai.



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3. Learned counsel for the petitioner submitted that the case is being tried by the learned Sessions Judge, Special Court for exclusive trial of POCSO Act, Chennai for offences punishable under Section 366(A) IPC and Section 6 of POCSO Act in Crime No.201 of 2023 on the file of the respondent-Police. He further submitted that in the said case trial has commenced and chief and cross-examination of both side witnesses were completed. At the time of chief examination of D.W.2, who is the cousin sister of the accused, informed the Court that the victim came with the accused on her own volition and she has also showed a picture, which was captured in her mobile phone by the accused in which D.W.2 and victim were standing together and the victim was happily posing to the photo. Hence the petitioner's counsel requested Sessions Judge to mark the said photo as defence side evidence. However, the trial Court rejected the plea on the ground that the photo can only be marked by a person who captured it. Further, the photo revealing victim's identity can never be allowed to be marked as evidence.



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4. Learned counsel for the petitioner further submitted that the victim's photo with D.W.2 clearly shows that the accused has no culpable state of mind to commit any such offence as levelled against him by the prosecution. The victim herself voluntarily went to the house of the accused, therefore, it is necessary to mark the photo in which the victim was standing along with the sister of the accused.

5. On a perusal of the records it is seen that the offences committed by the petitioner/accused are not only the offence under Section 366(A) IPC and the accused has committed the offences under Sections 4 and 6 of POCSO Act also. Though as per the prosecution case, the victim was staying along with the accused for three days, admittedly the victim is a minor, who is aged about 13 years and even assuming that the victim came on her own volition, the offence committed by the accused cannot be countenanced. Therefore, marking of Photo is absolutely not necessary to decide the case. Hence this Court does not find any reason to interfere with the finding of the trial Court rejecting plea of marking the photograph.



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6. According, this Criminal Original Petition is dismissed.

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30.01.2025

Index : Yes/No

Neutral Citation Case : Yes/No

Speaking Order : Yes/No

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To

1. The Sessions Judge,
Special Court for exclusive trial of POCSO Act,
Chennai.
2. The The Inspector of Police
W-7, All Women Police Station,
Anna Nagar, Chennai – 600 040.
3. The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN, J

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