



WEB COPY



Crl.OP.No.30501 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2025

CORAM:

THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.OP.No.30501 of 2025

Natarajan

...Petitioner

Vs.

State rep. by
The Inspector of Police,
All Women Police Station,
Cheyyar, Tiruvannamalai District.

...Respondent

Criminal Original Petition filed under Section 528 of BNSS, 2023 to set aside the return order dated 25.09.2025, made in un-numbered Crl.MP.No. of 2025 in Spl.SC.No.75 of 2023, on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Tiruvannamalai.

For Petitioner : Mr.B.Jawahar

For Respondent : Mr.R.Vinothraja, GA(Crl. Side)

ORDER

This criminal original petition has been filed seeking quashment of the return order dated 25.09.2025 passed in un-numbered Crl.MP.No. of 2025 in



CrI.OP.No.30501 of 2025

Spl.SC.No.75 of 2023 on the file of the Special Court for Exclusive Trial of cases under POCSO Act, Tiruvannamalai.

2. The brief facts are as follows:

The petitioner is an accused facing trial in Spl.SC.No.75 of 2023 for the offences under Sections 376(2)(n), 363 and 376AB of IPC and Sections 6, 5(I), 5(j)(ii) and 5(m) of the POCSO Act, 2012. The petitioner filed a petition under Section 45 of the Indian Evidence Act in CrI.MP.No. of 2025, seeking to conduct DNA test on the victim, the child born to the victim and the petitioner/accused. However, the trial court, vide impugned order dated 25.09.2025, dismissed the said petition. Challenging the same, the petitioner/accused has come up with the present petition.

3. Learned counsel for the petitioner submitted that the victim girl examined herself as P.W.1 and at the time of cross-examination, the victim girl had deposed that she has no objection for performing DNA test on the child. Learned counsel further submitted that it is the case of the prosecution that the petitioner had physical affair with the victim girl which resulted in the victim girl giving birth to the child, however, the same is not true and on



no occasion the petitioner had physical relationship with the victim girl and he has been made a scapegoat for the offence committed by some other persons. Therefore, the petitioner filed the present petition seeking to perform DNA test on the child, as the same is very much necessary to prove his innocence and it would also bring the entire false theory made by the complainant to light. However, without considering any of the above said facts, the Special court, vide impugned docket order, returned the said petition without even numbering the same, which is not sustainable. Accordingly, he prayed for setting aside the impugned docket order dated 25.09.2025 returning the petition filed under Section 45 of the Indian Evidence Act seeking to perform DNA test on the child.

4. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent submitted that the victim girl was born on 24.10.2005 and the victim's mother gave a complaint on 05.11.2019 for the offence that took place before one year and at the time of occurrence, the victim was only 13 years old and she was subjected to sexual assault on multiple occasions by the petitioner, who was aged about 57 years. He further submitted that the victim girl gave birth to a child on 10.12.2019 and the child was surrendered



Crl.OP.No.30501 of 2025

to the Child Welfare Board on 23.03.2020 and subsequently, the child was given on adoption as early as on 08.07.2020. While so, after a lapse of about five years, the present petition has been filed by the petitioner/accused seeking to perform DNA test, which is wholly unsustainable. He also submitted that the petitioner/accused was also granted bail by the POCSO Court, Tiruvannamalai vide order dated 04.02.2020 made in Crl.MP.No.12 of 2020. Learned counsel further submitted that there are 22 witnesses in this case and the victim girl examined herself as P.W.1 and the matter is now posted for continuation of cross-examination of P.W.1 and at this stage, filing the present petition is wholly unsustainable, as the same is nothing but a tactic adopted by the petitioner to drag on the proceedings. Accordingly, he prayed for dismissal of this petition.

5. Heard the learned counsel on either side and perused the materials available on record.

6. The facts are not in dispute. For better appreciation, the relevant portion of the impugned order is extracted hereunder:

“The present petition has been filed to conduct DNA test to the child born to the victim. On perusal of records, the victim



WEB COPY



Crl.OP.No.30501 of 2025

*child gave birth to the child on 10.12.2019 and the child was surrendered on 23.03.2020 to CWC & CWC declared the child legally free for adoption on 29.05.2020 and was given in adoption. Thereafter in the year 2021, police gave a letter for conducting DNA test on 16.04.2021, and this court issued a letter No:2681/22 dated 20.10.2022 and CWC given reply as per Juvenile Justice (Care and Protection) Act, 2015 and Adoption Regulation 2017 **Amended on 21 & 22**, child cannot be produced now the present petition has been filed 5 years after the child was given in adoption.*

*The Hon'ble High Court of Kerala in Crl.M.C.No:5136/2023 dated 19.04.2024 in the case of **Suo Moto Vs. St. of Kerala rep. by PP, HC of Kerala & 4 others**, has laid down guidelines as follows:*

The Courts shall not entertain applications seeking DNA examination of children given in adoption. Further the HHC of Bombay in 2023 BHC AS 34959 Surender Vijay Paswan Vs. St. of Maharashtra & another while considering an application filed by the investigating officers in a rape case seeking permission to collect DNA sample of Victim's Child who was already given on adoption held that DNA test of the child may not be in the interest of the child and denied the petition for DNA test as it interferes with the child's fundamental right to privacy and emotional well being.

In view of the above this petition is returned as not maintainable as per the decision of Hon'ble Kerala High Court."



WEB COPY

7. On a perusal of the order impugned, it is evident that the victim girl/PW.1 was examined in chief as early as on 04.08.2025 and on the same day, the victim was cross-examined and was further cross-examined in part on another date and the matter was thereafter, posted for further cross-examination of P.W.1, at which stage, the petitioner filed a memo stating that the present petition seeking to perform DNA test has been filed.

8. Even assuming but without conceding that performing DNA test is necessary for proving the innocence of the petitioner, the petitioner should have filed the petition under Section 45 of the Indian Evidence Act, with promptitude and dispatch and should not have slept over the matter like Rip Van Winkle, since the petitioner would have come to know about the non performing of DNA test at the stage of filing of the final report itself, which was done as early as on 29.03.2023 and it is beyond the ken of this Court as to what prevented the petitioner from making a request for DNA test at the relevant point of time itself.



CrI.OP.No.30501 of 2025

9. Further, other than the stance taken by the defence in the petitions filed under Section 45 of the Indian Evidence Act, to the effect that the petitioner has been made a scapegoat for the offence committed to the victim and that he had never had physical relationship with the victim, no other valid reason has been assigned by the petitioner.

10. In view of the above, this Court is of the view that the trial court had rightly returned the petition seeking to perform DNA test on the child, filed by the petitioner and hence, no interference is warranted in the impugned return docket order.

11. For the reasons aforesaid, this criminal original petition stands dismissed.

10.11.2025

skt

Index	: Yes/No
Speaking order	: Yes/No
NCC	: Yes/No



Crl.OP.No.30501 of 2025

A.D.JAGADISH CHANDIRA, J.

skt

To:

1. The Special Court for Exclusive Trial of Cases under POCSO Act,
Tiruvannamalai.
2. The Inspector of Police,
All Women Police Station,
Cheyyar, Tiruvannamalai District.
3. The Public Prosecutor,
Madras High Court.

Crl.OP.No.30501 of 2025

10.11.2025