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CrI. O.P. No. 4053 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2026

CORAM:

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

CrI. O.P. No. 4053 of 2026

Anbzhagan

... Petitioner

Vs.

State Represented by,
The Inspector of Police,
All Women Police Station, Nannilam,
Tiruvarur District.
(Crime No. 4 of 2023)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita/Section 482 Cr.P.C., to set aside the order dated 04.11.2025 passed in CrI.M.P.No.2 of 2025 in Spl.S.C.No.38 of 2023 on the file of the Sessions Judge, Fast Track Mahila Court, Tiruvarur.

For Petitioner : Mr. Swami Subramanian

For Respondent : Mr. S. Santhosh
Government Advocate (Criminal Side)

ORDER

The present Criminal Original Petition has been filed seeking to set aside the order dated 04.11.2025 passed in CrI.M.P. No. 2 of 2025 in Spl.S.C.No.38 of 2023 on the file of the Sessions Judge, Fast Track Mahila Court, Tiruvarur.



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2. Learned counsel for the petitioner would submit that the petitioner is an accused facing trial for the offence under Section 5(m) r/w 6 of the Protection of Children from Sexual Offences Act, 2012. P.W.1 to P.W.13 were examined in chief from 05.04.2025 to 05.08.2025. Due to improper legal advice, the petitioner was unable to cross-examine the witnesses on the same day of their examination in chief before Court. Subsequently, on wrong advice, the petitioner left the village and was later arrested and remanded to judicial custody and he continues to remain in judicial custody.

3. Learned counsel would further submit that though there had been lapses on the part of the petitioner in not cross examining the witnesses, if the petitioner is not granted one opportunity to cross-examine them, it would result in denial of defence and cause grave prejudice to the petitioner. He would further submit that the petitioner was arrested and was in custody and the trial Court failed to inform the petitioner about the availability of legal aid while he was facing trial from custody.

4. He would further submit that the petitioner is ready to abide by any condition, including imposition of costs and undertakes to cross examine the witnesses on the very same day of their appearance before the Court.



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5. Learned Government Advocate (Crl.Side) appearing for the respondent-police would submit that this is a case for offence under Section 5(m) r/w 6 of the Protection of Children from Sexual Offences Act, 2012. When the child was brought before the Court, the petitioner did not appear and the learned counsel appearing for the petitioner also withdrew his vakalat. Thereafter, the victim was brought before the Court on the next hearing date and was examined in chief. He further submitted that PW.2 to PW.4 are in Coimbatore and the other witnesses are official / local witnesses.

6. Learned Government Advocate (Crl.Side) drew the attention of this Court to the judgment of the Hon'ble Supreme Court in the case of *Arjun Sonar v. The State of Arunachal Pradesh* reported in *2025 LW (SC) 935*, wherein it has been held that Courts have a duty to ensure that survivors of child abuse are not re-traumatized by the very justice system they turn for protection. He further submitted that the petitioner had also absconded on an earlier occasion. The trial Court, rightly finding that the petitioner had not cross-examined the witnesses only in order to protract the trial, dismissed the application. He would further submit that there is a specific bar under Section 33(5) of the POCSO Act for repeatedly calling the child victim to

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testify in the Court and therefore, he would object to the grant of the relief sought.

7. Heard both sides and perused the materials available on record.

8. The occurrence is said to have taken place on 23.06.2023. The victim girl / PW1, who was then aged about 4 years and now aged about 7 years, was brought before the Court for examination on 01.02.2025. On that day, the accused did not appear before the Court and the counsel had withdrawn the vakalat. Subsequently, the witness PW.1 was again brought before the Court on 05.04.2025 for examination. On that day, the accused was present but had not engaged counsel. Thereafter, all the other witnesses have been examined on various dates. The petitioner did not takes steps to cross examine them and filed the present petition only after the examination of Investigation Officer was over.

9. Though there have been lapses on the part of the petitioner, the trial Court, which ought to have informed the petitioner about the availability of legal aid, has not done so. At the same time, this Court is bound by the mandate of Section 33 of the POCSO Act.



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10. In view of the judgment in *Arjun Sonar's* case (supra), PW.1 cannot be recalled. However, the other witnesses may be recalled, failing which it would amount to denial of defence.

11. Accordingly, the learned trial Judge shall fix a date for the appearance of PW.2 to PW.13 and the petitioner shall ensure that the said witnesses are cross-examined on the very same day of their appearance before the Trial Court.

12. Therefore, the impugned order dated 04.11.2025 in Crl.M.P.No.2 of 2025 stands set aside. The petitioner is directed to deposit Rs.3,000/- to the credit of Spl.S.C.No.38 of 2023 on the file of the Trial Court and on such deposit, the learned trial Judge shall disburse the said amount to PW.2 to PW.4 @ Rs.1,000/- each and fix a date for appearance of the witnesses PW.2 to PW.13. The petitioner shall cross-examine the witnesses on the same day of their appearance before the trial Court. In the event of the petitioner failing to cross-examine the witnesses on the day of their appearance, he would lose further chance of cross-examination.



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13. In the result, this Criminal Original Petition stands partly allowed.

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Index: Yes/No

Neutral Citation: Yes/No

AT

Note: Issue order copy on 19.02.2026

To

- 1.The Inspector of Police,
All Women Police Station, Nannilam,
Tiruvarur District.
- 2.The Public Prosecutor,
High Court of Madras.
- 3.The Sessions Judge,
Fast Track Mahila Court,
Tiruvarur.



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A.D.JAGADISH CHANDIRA, J.

AT

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