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CRL A No. 1784 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22-01-2026

PRONOUNCED ON: 28-01-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 1784 of 2025

Mageshwari

... Appellant/A5

Vs.

1.The State Rep by,
The Assistant Commissioner of Police
(EDF-II),Central Crime Branch,
GCP, Chennai.

... 1st Respondent/Complainant

2.Sharfudeen

... 2nd respondent/Defacto complainant

3.S.Usha

... 3rd respondent/mother of the victim

Prayer: Criminal Appeal filed under Section 483 of BNSS, to set aside the order passed in Crl.M.P.No.1611/2025 in Spl.S.C.No.28/2025 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai and enlarge the appellant on bail.

For Appellant:

Ms.T.Kokilavani
for Mr.M.Sathish

For Respondents:

Mr.S.Balaji (For R1)
Govt. Advocate (Crl. Side)
No appearance (for R2)
Ms.Deepika Murali (for R3)

Judgment

The Criminal Appeal has been filed by Accused No.5, challenging the impugned order dated 05.11.2025, passed by the learned Sessions Judge,



Special Court for Exclusive Trial of Cases under POCSO Act, Chennai, in
Crl.M.P.No.1611/2025 in Spl.S.C.No.28/2025, rejecting her bail application.

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2. The appellant is accused of the offence under Sections 103(1) BNS, 61 r/w 238(a) r/w 103(1) BNS, Section 3(2)(v)(vi) of the SC/ST Act and Section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

3.(i) The case of the prosecution as per the final report is that the victim/deceased aged about 16 years was staying in the house of the 1st and 2nd accused and working as a domestic help; that the victim was found dead at the bedroom with injuries all over her body on 01.11.2024; and that a case in Cr.No.652 of 2024 for the offence under Section 194 BNS was registered by the respondent.

(ii) It is the further case of the prosecution that during the course of the investigation, it was revealed that the 2nd accused and his friend/3rd accused, had repeatedly committed penetrative sexual assaults on the victim girl; that the 1st and 4th accused, who are the wives of the 2nd and 3rd accused, respectively, were not initially aware of the acts of 2nd and 3rd accused; that thereafter, the 1st accused on coming to know that the victim was close to her husband and the 3rd accused, informed the 4th accused about the conduct of the 3rd accused; that the victim was thereafter subjected to severe harassment by the 1st and 4th accused; that one week prior to the occurrence when the victim refused to have sexual



intercourse with the 2nd accused, he had attacked her on her chest, thighs and other parts of the body; that since the victim was subjected to severe harassment, the victim was not permitted to leave the house for about one month before the occurrence; that the appellant/5th accused who was working as a servant maid in the said house had instigated the other accused and she actively assisted them in causing injuries to the victim on the date of occurrence (i.e.,) 31.10.2024, which resulted in the death of the deceased.

(iii) The appellant had filed bail applications before the trial Court. One of the bail petitions filed in Crl.MP.No.456 of 2025, came to be dismissed on 08.04.2025. The appellant had challenged the said order before this Court in Crl.A.No.501 of 2025, which came to be dismissed on 25.07.2025. The appellant had challenged the said order before the Hon'ble Supreme Court in SLP (Crl.) No.14284 of 2024, which was also dismissed by the Hon'ble Supreme Court on 22.09.2025. The appellant thereafter filed an application for bail in Crl.MP.No.1611 of 2025 before the trial Court, which came to be dismissed by the impugned order dated 05.11.2025.

4. The learned counsel for the appellant would submit that the appellant is in custody from 02.11.2024; that after the earlier dismissal of the bail application, the respondent have filed the final report and the charges were also framed by the Court on 09.12.2025; that the trial is about to commence; that co-



accused viz., 6th accused [Seema Begum] was granted bail by this Court in Crl.A.No.1172 of 2025 on 14.10.2025; that the appellant was only working as a house maid and she is the sole breadwinner of the family, who has to support her aged mother and her son; and considering the nature of the evidence against her, the change in circumstances and the period of incarceration, prayed that the appellant may be released on bail.

5. (i) The learned Government Advocate (Crl.Side) *per contra* submitted that the appellant had filed successive bail applications before the trial Court; that she had challenged the dismissal of an earlier bail application before this Court in Crl.A.No.501 of 2025; that this Court after elaborately considering the evidence on record found that the appellant has not made out any case on merits for bail; that the Hon'ble Supreme Court had also dismissed the SLP filed against the said order; and that therefore the instant appeal seeking bail is an abuse of process of law.

(ii) The learned Government Advocate (Crl.Side) submitted that the appellant has been charged for the offence of murder, destruction of evidence, cruelty on minor girl and under SC/ST Act, for humiliating a Scheduled Caste person; that three neighbours have spoken about the appellant leaving the house of 1st and 2nd accused at around 7.00pm on a Diwali Day i.e. On 31.10.2024, which is unusual; that on 31.10.2024, the 1st accused had made a Whatsapp



video call to the appellant at about 22.45 hours, which is confirmed by the report of the Forensic Sciences Expert; that there was no necessity for the 1st accused to call the appellant through a video call at such an odd hour; that there are videos to show that the victim had made statements as against the appellant, which is supported by voice analysis report; that hence, the appellant had prior enmity with the victim; and that the confession of the accused (appellant) and co-accused, the medical evidence and the other above said circumstances are the materials relied upon by the prosecution to prove the guilt of the appellant.

6.(i) Ms.Deepika Murali, learned counsel for the 3rd respondent/mother of the victim would submit that the bail application of the accused was rightly dismissed by the learned Special Judge, as the charges are grave and serious against the appellant; that the evidence discloses that the appellant was seen near the house of the 1st and 2nd accused wherein the deceased was found dead; that prolonged incarceration is not a valid ground for bail when the delay is caused by the accused; that there are no change in circumstances since the dismissal of the earlier appeal by this Court, which was confirmed by the Hon'ble Supreme Court; and hence, successive bail applications cannot be entertained and rightly rejected by the trial Court.

(ii) The learned counsel relied upon the judgment of the Hon'ble Supreme Court in ***Kalyan Chandra Sarkar v. Rajesh Ranjan***, reported in (2004) 7 SCC



528, in support of her submission that the Court has to consider the reasons and grounds on which the earlier bail applications were rejected and that bail cannot be granted only because the accused has been incarcerated for a prolonged period.

(iii) The learned counsel also relied upon the judgment of the Hon'ble Supreme Court in *Sunil Kumar v. State of Bihar*, reported in (2022) (3) SCC 245 and *State of Maharashtra vs. Captain Buddhikota Subba Rao*, reported in 1989 Supp (2) SCC 605, in support of her submission that change in circumstances has to be considered along with the factors such as seriousness of the offence and circumstances of the case while considering the bail application and in this case, when all the factors are considered, the appellant would not be entitled to bail.

(iv) The learned counsel also relied upon the judgment of the Hon'ble Supreme Court in *State of Bihar v. Rajballav Prasad*, reported in 2017(2) SCC 178, in support of her submission that when the earlier order denying bail is supported with cogent reasons, the said bail order cannot be interfered or modified and any order granting bail would amount to review of the earlier order.



(v) The learned counsel also relied upon the judgment of the Hon'ble Supreme Court in *X vs. State of UP and Another [2026 INSC 44]*, in support of her submission that mere filing of the charge sheet would not give a right to the accused to seek bail, if the accused is involved in grave offences under the POCSO Act.

7. It is seen from the earlier order passed by this Court in Crl.A.No.501 of 2025 that this Court had observed that though the offences were taken cognizance by the Special Court, further investigation is still in progress. The Hon'ble Supreme Court had also dismissed the SLP (Crl.) No.14284 of 2025 challenging the said order.

8. There cannot be any quarrel with the legal submissions made by the learned counsel for the 3rd respondent/defacto complainant. As observed in the aforesaid judgments, this Court has to consider the reasons and grounds on which the earlier bail application was rejected. This Court also has to consider whether there is any change in circumstances and if there is no change in circumstances, the law is very clear that subsequent order would amount to review of the earlier order. The law also is well settled that mere filing of charge sheet and long period of incarceration alone, cannot be the basis to consider the bail application, if the offences alleged are heinous crime. In the



light of the above settled position of law, this Court has to examine the facts of this case.

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9. There are no eyewitness to the occurrence. The offence is said to have taken place in the house of 1st and 2nd accused. The prosecution seeks to rely upon a few circumstances against the appellant viz., that she came out of the house of the 1st accused on 31.10.2024 at about 7.00 p.m.; that the 1st accused had made a video call at odd hours to the appellant; that the appellant had prior enmity with the victim as the victim talked ill about her, which was recorded in a video; and that therefore she is also a part of the conspiracy to do away with the deceased along with A1 to A4 and A6 and also participated in the occurrence.

10. It is no doubt true that the crime that has been committed on the victim girl aged about 16 years is very serious and heinous. The role played by each of the accused and the evidence against each of them, have to be considered independently. The appellant was only a servant maid in the house of the 1st and 2nd accused. Her role in the alleged crime and the nature of evidence as against her cannot be equated with the role played by the other accused viz., A1 to A4. As stated earlier, the prosecution relies upon the confession of the accused and the other circumstances pointed out above. It is for the trial Court to consider whether the above circumstances and the



materials relied upon by the prosecution is sufficient to hold the appellant guilty of the offence.

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11. It is seen that out of the three circumstances relied upon by the prosecution, two circumstances are based on electronic records. The appellant cannot tamper with those two records. The other circumstances of last seen i.e., the appellant coming out of the house of the 1st accused on 31.10.2024, is spoken to by three witnesses viz., the neighbours. Considering the social status of the appellant and that of the witnesses, it is unlikely that the appellant would tamper with those witnesses. Even if she makes any such attempt, the prosecution or the defacto complainant would always be at liberty to seek cancellation.

12. The appellant is in custody from 02.11.2024 and it cannot be said that the appellant is responsible for the delay in the filing of the final report and in the framing of the charge by the trial Court. The prosecution has cited 57 witnesses and therefore, the trial is not likely to be completed in the near future. Subsequent to the earlier dismissal, it is seen that the respondent have filed the final report and as submitted by the learned counsel for the 3rd respondent, charges also have been framed on 09.12.2025. It is now reported that the case is posted for trial. Further, it is more than six months since the earlier appeal for bail was dismissed. Thus, there is substantial change in circumstances since the



earlier dismissal of bail, as the investigation has been completed in all aspects and the charges also have been framed by the trial Court. Therefore, applying the law laid down by the Hon'ble Supreme Court in the cases cited by the learned counsel for the 3rd respondent, this Court is of the view that the appellant is entitled to bail. This Court has taken into consideration the role played by the appellant and the evidence sought to be produced by the prosecution.

13. Prolonged pre-trial detention insofar as the appellant is concerned would violate her right under Article 21 of the Constitution of India. As stated earlier, her role cannot be equated with the role of the other accused. The appellant, a house maid comes from a poor financial background and she is the sole breadwinner, who has to support her aged mother and her son.

14. Therefore, considering the change in circumstances, the role played by the appellant, the evidence collected during the investigation to prove the guilt of the appellant and taking into consideration all the above facts, this Court is inclined to set aside the impugned order.

15. It is also made clear that the observations made in this order are applicable only to the case of the appellant/5th accused and the case of the other accused has to be considered independently.



16. In the result, the order dated 05.11.2025 passed in Crl.M.P.No.1611/2025 in Spl.S.C.No.28/2025 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai, is set aside. The Criminal Appeal is allowed and the Appellant/A5 is ordered to be released on bail on the following conditions:

(i) The appellant/A5 shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties, each for a likesum to the satisfaction of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai.

(ii) The sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhaar Card or Bank Pass Book and their mobile numbers to ensure their identity.

(iii) The Appellant/A5 shall report before the trial Court on every Monday at 10.30 a.m., until further orders and shall appear before the trial Court on all hearing dates.

(iv) The Appellant/A5 shall not abscond either during investigation or trial.

(v) The Appellant/A5 shall not tamper with evidence or witness either during investigation or trial.



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(vi) On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the Appellant/A5, in accordance with law, as if the conditions have been imposed and the Appellant/A5 released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji Vs. State of Kerala (2005)AIR SCW 5560.***

(vii) If the Appellant/A5 thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

28-01-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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Issue order copy today.

To

1. The Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act,
Chennai
2. The Assistant Commissioner of Police
(EDF-II), Central Crime Branch,
GCP, Chennai.
3. The Superintendent of Prisons,
Central Prison, Puzhal.
4. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN J.

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**PRE-DELIVERY JUDGMENT IN
CRL A No. 1784 of 2025**

28-01-2026