



WEB COPY



Crl.O.P.No.32623 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.32623 of 2025
and Crl.M.P.No.22663 of 2025

N.Om Prakasam

... Petitioner

vs.

1.The State rep. By
The Station House Officer,
Bohour Police Station,
Puducherry.
(Crime No.133 of 2024).

2.Mrs.K.Adhilakshmi

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C. r/w. 528 of BNSS, to set aside the docket order dated 22.10.2025 passed by the Sessions Judge, Fast Track Court exclusively to deal with offences under POCSO Act, Puducherry in Spl.S.C.No.26 of 2025.

For Petitioner : Mr.G.Prabhakaran

For R1 : Mr.M.V.Ramachandra Murthy
Public Prosecutor (Puducherry)



ORDER

WEB COPY

The petitioner/accused in Spl.S.C.No.26 of 2025 challenging the docket order dated 22.10.2025 filed this petition.

2.The contention of the learned counsel for the petitioner is that the petitioner is facing trial for offence under Section 6 of Protection of Children from Sexual Offences Act (POCSO Act), on allegation penetrative sexual assault committed on the victim from July 2023 to 04.11.2023 and a case registered in Crime No.133 of 2024, thereafter charge sheet filed. The Trial Court on 07.08.2025 issued summons for appearance of LW1 and LW2, the mother of the victim and the victim girl for examination on 15.09.2025. On that day the witnesses not present, the case was adjourned to 07.10.2025 and again adjourned to 22.10.2025 and on that day, without any petition either from the prosecution or the accused, the Trial Court *suo motu* on its own passed the impugned order recording that on perusal of Medico-legal examination report there is no major mental illness and in psychiatric assessment report, it is mentioned that child is oriented to time/place and person, the victim child appeared predominantly euthymic, the child



occasionally would not understand the question and had to be repeated, further child appeared very guarded and hence, it is necessary to examine the victim with the help of a Psychiatric Doctor/Special Educator by 30.10.2025.

3.The specific contention of the learned counsel for the petitioner is that in this case the victim child, her mother and family members examined, statements recorded under Section 161 Cr.P.C., the respondent police found no reason or any need to seek assistance of Special Educator. Likewise, the Magistrate who recorded 164 statement found no infirmity on the victim child and Section 26 of POCSO Act was not invoked. He further submitted that statement of victim under Section 164 Cr.P.C./183 of BNSS recorded by the learned Judicial Magistrate No.IV, Puducherry on 18.12.2024 and competency of examination before recording of testimony done and proceeded to record the statement of witness, and thereafter, given a certificate that the statement of the victim child recorded as stated by her and further certified that the victim child was able to understand the proceedings throughout the entire proceedings. Thus, there was no doubt in the competency of the victim giving statement both before the Police and before the Magistrate. This being so, merely on the Psychiatric assessment report



dated 06.11.2024 the Trial Court passing the impugned order is not proper.

Further the Trial Court failed to look into the fact that psychiatric assessment evaluation was on 05.11.2024 and 164 statement was recorded on 18.12.2024, nearly after a month of psychiatric assessment report and the Magistrate found that the witness was fit to give statement on her own. This being so, the Trial Court passing the impugned order is on a misreading of the word “Euthymic” and passing the impugned order is not proper.

4.The learned counsel for the petitioner further referred to the guidelines for recording of evidence of vulnerable witness. The Criminal Rule Committee of this Court formulated guidelines and the same has been notified in Notification No.26 of 2024 and communicated to all the Courts in R.O.C.No.15447/2023/F1 as per Rule 3(a)(ii) victim of offence under POCSO Act is a vulnerable witness. Further Rule 7 refers to Section 118 of Indian Evidence Act and as per explanation given, the Court shall conduct competency examination before recording the testimony of such witness on an application of either prosecution or defence or *suo motu*. Thus, though Special Judge *suo motu* can conduct a competency examination but that should be only by putting questions on assessing the witness and not merely



on the psychiatric assessment report. He further submitted that such competency examination to be made only in the presence of counsel for the parties as per Rule 8(b). Further as per Rule 9, it is the Presiding Judge to assess the competency of the witness. Thus, it is clear that prior to passing any order under Section 38(2) of POCSO Act, competence assessment of witness ought to be done in the presence of counsel for the parties.

5.The learned Public Prosecutor (Puducherry) submitted that in this case the victim along with her parents and siblings all staying in the petitioner's farm and they were taking care of fish culture and victim attending School. The petitioner taking dominant advantage over the victim committed penetrative sexual assault not once but on several occasions. The victim in fear not disclosed immediately and thereafter, the villagers sent a complaint which was verified, found to be true and the victim's parents contacted, case registered and the petitioner/accused was arrested. During investigation, the victim, her parents and others examined, the victim was produced before the Doctor for psychological and medical examination and thereafter, she was produced before the Magistrate. He fairly submitted that neither the Police nor the Magistrate had any doubt with regard to the



CrI.O.P.No.32623 of 2025

competency of the witness. Hence, the statement under Section 161 Cr.P.C. and 164 Cr.P.C. recorded. The prosecution not filed any petition under Section 38 of POCSO Act, and sought for any Special Educator. The Trial Court on its own on perusal of psychiatric assessment report dated 06.11.2024 passed the impugned order and to that extent, the procedure followed might not be in confirmity to the act and rules, but the Special Judge has got ample power to examine, assess the minor victim and if found victim needs a Special Educator to assist her during examining her as witness, appropriate orders can be passed.

6.Heard the submissions made by both sides and perused the materials. A scanned reproduction of the impugned order is as follows:



CrI.O.P.No.32623 of 2025

WEB COPY

IN THE FAST TRACK COURT EXCLUSIVELY TO DEAL WITH OFFENCES UNDER
POCSO ACT AT PUDUCHERRY

PRESENT: **Mr. M.D. SUMATHI, B.Sc., B.L.**
SESSIONS JUDGE

SPECIAL SESSIONS CASE No. 26/2025

State rep. by the Station House Officer,
Bahour Police Station through
Special Public Prosecutor, Puducherry



Vs.

Omprakasam

Accused

DOCKET ORDER

22.10.2025

Accused present. On perusal of Medico-legal examination report it is mentioned that as described in psychiatric assessment report no major mental illness. In psychological assessment report it is mentioned that the child is oriented to time / place and person. She appeared predominantly euthymic. Child is occasionally would not understand the question and they had to be repeated. Child appeared very guarded when asking details regarding the incident. Hence, it is necessary to examine the victim with the help of a Psychiatric Doctor / Special Educator by 30.10.2025.

Sd/-
SESSIONS JUDGE
FAST TRACK COURT
(POCSO ACT)
PUDUCHERRY

30.10.2025

Accused present. Address to Special Educator by 10.11.2025.

Sd/-
SESSIONS JUDGE
FAST TRACK COURT
(POCSO ACT)
PUDUCHERRY



// TRUE COPY //

(M.D. SUMATHI)
SESSIONS JUDGE

FAST TRACK COURT (POCSO ACT)
PUDUCHERRY



7.From the impugned order, it is clear that the learned Sessions Judge, Fast Track Court Exclusively to deal with Offences under POCSO Act, Puducherry passed the order based on the Medico-legal examination report dated 06.11.2024, wherein it is recorded that no major mental illness found. The word stressed therein is “Euthymic”, which is defined in Stedman’s Medical Dictionary as Relating to, or characterised by euthymia”. Euthymia is defined as (1) Joyfulness, mental peace and tranquility and (2) Moderation of mood, not manic or depressed. Further, it is to be seen that prior to psychiatric assessment dated 05.11.2024, the Police recorded the statement of the victim child under Section 161 Cr.P.C. and after the psychiatric assessment report, the learned Magistrate recorded 164 statement of the victim child. Neither the Police nor the Magistrate found the requirement of any assistance of Special Educator as envisaged under Section 26 of POCSO Act. Further, under Section 38(2) of POCSO Act the Special Court may take the assistance of Special Educator if it is found to be required but this can be done only after assessing the competency of the victim/witness as per Section 118 of the Indian Evidence Act and as per the guidelines of vulnerable witness rules. But procedures not followed in the present case.



Crl.O.P.No.32623 of 2025

In view of the same, this Court set asides the impugned order passed by the Trial Court.

8. Accordingly, the Criminal Original Petition stands allowed and the impugned order dated 22.10.2024 passed by the learned Sessions Judge, Fast Tract Court Exclusively to deal with Offences under POCSO Act, Puducherry in Spl.S.C.No.26 of 2025 is set aside. The Trial Court to conduct a competency assessment by examination of the victim child and thereafter to pass appropriate orders. Consequently, connected miscellaneous petition is closed.

24.04.2026

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation: Yes/No
cse



CrI.O.P.No.32623 of 2025

WEB COPY

To

- 1.The Station House Officer,
Bohour Police Station,
Puducherry.
- 2.The Sessions Judge,
Fast Track Court exclusively to deal
with offences under POCSO Act,
Puducherry.
- 3.The Public Prosecutor,
Puducherry.



WEB COPY



Crl.O.P.No.32623 of 2025

M.NIRMAL KUMAR, J.

cse

Crl.O.P.No.32623 of 2025

24.04.2026