

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 30TH DAY OF AUGUST 2017/8TH BHADRA, 1939

Crl.MC.No. 2924 of 2017 ()

CRMP 19/2017 of CHIEF JUDICIAL MAGISTRATE,AMINI,
LAKSHADWEEP

PETITIONER(S)/PETITIONER/RESPONDENT/COMPLAINANT:

UNION TERRITORY OF LAKSHADWEEP,
REPRESENTED BY THE SUPERINTENDENT OF POLICE,
KAVARATTI

BY ADV. SRI.MANU.S, CGC, ADMINISTRATION OF THE UNION
TERRITORY OF LAKSHADWEEP

RESPONDENT(S)/RESPONDENTS/PETITIONERS/ACCUSED:

1. MOHAMMED HANEEFA,
S/O.H.P.MIGDAD, AGED 35,
MANJAMADA HOUSE, CHETLAT

2. MUJEEB RAHMAN P.,
AGED 43, S/O.ABDULLAKOYA T.P.,

THITHIYAPURA HOUSE, CHETLAT

3. UMMER FEROOK,

AGED 43, S/O.H.P.MIGDAD, PURATHAKAL HOUSE,

CHETLAT

R1-R3 BY ADV. SRI.SAIBY JOSE KIDANGOOR

R1-R3 BY ADV. SRI.P.M.MOHAMMED SALIH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 30-08-2017, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

Crl.MC.No. 2924 of 2017 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE I TRUE COPY OF THE FIR IN CRIME
NO.2/2017 OF CHETLAT POLICE STATION

ANNEXURE II(A) TRUE COPY OF THE STATEMENT OF
THE VICTIM UNDER SECTION 161 OF THE CR PC
DATED 1.3.2017

ANNEXURE II(B) TRUE COPY OF THE STATEMENT OF
THE VICTIM UNDER SECTION 161 OF THE CR PC
DATED 17.2.2017

ANNEXURE III TRUE COPY OF THE STATEMENT OF
THE VICTIM RECORDED UNDER SECTION 164 OF THE
CR.P.C. BY THE JUDICIAL FIRST CLASS
MAGISTRATE COURT, ANDROTH

ANNEXURE IV TRUE COPY OF THE STATEMENT OF
THE VICTIM RECORDED UNDER SECTION 164 OF THE
CR.P.C. BY THE CHIEF JUDICIAL MAGISTRATE,
AMINI

ANNEXURE V TRUE COPY OF THE APPLICATION
FOR BAIL IN CRL.M.P.NO.19/2017 FILED BY THE
RESPONDENTS HEREIN ALONG WITH THE 11 ACCUSED

ANNEXURE VI TRUE COPY OF THE NOTIFICATION
DATED 14.3.2017 ISSUED BY THE COURT OF
SESSIONS AT KAVARATTI AUTHORIZING THE
ASSISTANT SESSIONS JUDGE/CHIEF JUDICIAL
MAGISTRATE AT AMINI TO DEAL WITH ALL URGENT
MATTERS TO BE CONSIDERED BY THE SESSIONS
COURT, INCLUDING CASES UNDER THE POCSO ACT

ANNEXURE VII TRUE COPY OF THE OBJECTION
FILED BY THE PROSECUTION AGAINST GRANTING OF
BAIL TO THE RESPONDENTS

ANNEXURE VIII TRUE COPY OF THE ORDER PASSED
BY THE ASST. SESSIONS JUDGE GRANTING BAIL TO
THE RESPONDENTS

RESPONDENT(S)' EXHIBITS

/true copy/

P.S. to Judge

CR

B. SUDHEENDRA KUMAR, J.

Crl.M.C. No. 2924 of 2017

Dated this the 30th day of August, 2017

ORDER

The respondents are the accused in Crime No. 2 of
2017 of Chetlat Police Station registered for the offences
under Sections 4,6,8 and 10 of the Protection of Children
from Sexual Offences Act, 2012 (for short " the POCSO
Act") Section 376D read with Section 34 IPC.

2. The prosecution allegation is that the respondents committed penetrative sexual assault on the daughter of the de facto complainant aged 16 years at the house of the victim on so many occasions. The respondents were subsequently arrested. They were released on bail by the Assistant Sessions Court, Union Territory of Lakshadweep, Amini Island, as per Annexure

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- VIII order dated 21-3-2017 in Crl.M.P. No. 19/2017.

3. The petitioner filed this Crl. M.C. praying for
cancellation of bail granted to the respondents as per
Annexure -VIII order.

4. Heard.

5. It has been argued by the learned Standing
Counsel for the Union Territory of Lakshadweep that the
Assistant Sessions Court had no jurisdiction to grant bail
to a person accused of having committed the offences
under the POCSO Act, and in the said circumstances,
Annexure-VIII order passed by the Assistant Sessions
court cannot be sustained.

6. The learned counsel for the respondents, on the other hand, has argued that the Assistant Sessions Court had ample jurisdiction to grant bail to a person accused of

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having committed the offence under the POCSO Act, in
view of Annexure - VI official memorandum dated 14-3-
2017 which authorized the Assistant Sessions Judge-cum-
Chief Judicial Magistrate , Amini to deal with the POCSO
matters during the absence of the Special Judge, Kavarathi
under Section 10 (3) Cr.P.C. and in the said circumstances,
Annexure-VIII order was perfectly justified.

7. Section 28 of the POCSO Act provides for
designation of Special Courts for the trial of offences under
the POCSO Act. For the sake of convenience, Section 28
of the POCSO Act is extracted hereunder:-

"Designation of Special Courts - (1) For the purpose
of providing a speedy trial, the State Government shall

in consultation with the Chief Justice of the High
Court, by notification in the Official Gazette, designate
for each district, a Court of Session to be a Special
Court to try the offences under the Act.

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Provided that if a Court of Session is notified as a children's Court under the Commissions for protection of Child Rights Act, 2005 (4 of 2006) or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this Section.

(2) While trying an offence under this Act, a Special Court shall also try an offence [other than the offence referred to in sub-section (1)], with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

3. The Special Court constituted under this

Act, notwithstanding anything in the Information

Technology Act, 2000 (21 of 2000) shall have

jurisdiction to try offences under Section 67B of that

Act insofar as it relates to publication or transmission

of sexually explicit material depicting children in any

act, or conduct or manner or facilitates abuse of

children online".

8. Section 28 of the POCSO Act provides for designation of a Court of Session to be a special court in each district to try the offences under the POCSO Act.

The proviso to Section 28 provides that if a Court of Session is notified as a Children's Court under the Commission of Protection of Child Rights Act or if a Special Court is designated for similar purposes under any other law for the time being in force, then such court shall be deemed to be a special court to try the offences under the POCSO Act. Section 28 contemplates only one Special Court in every district. Therefore, if a Court of Session is notified to be a special court under Section 28

of the POCSO Act, that Court alone has jurisdiction to try

the offences under the POCSO Act.

9. Section 32 (1) of the Act provides that the

State Government shall, by notification in the official

Gazette, appoint a Special Public Prosecutor for every

Special Court for conducting cases under the provisions of

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POCSO Act. Therefore, the Special Public Prosecutor

appointed under Section 32(1) of the POCSO Act alone

shall have the right to conduct prosecution under the

POCSO Act. At this juncture, it is relevant to read Section

4 of the Code which is extracted hereunder:-

"4. Trial of offences under the Indian Penal Code and other laws:- (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and other wise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences".

10. Section 33 (1) provides that a special court

may take cognizance of any offence, without the accused

being committed to it for trial, upon receiving a complaint

of facts which constitute such offence, or upon a police

report of such facts. It is clear from Section 33(1) of the

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POCSO Act that the Special Court is having the original jurisdiction to take cognizance of the offence under the POCSO Act.

11. A reading of Section 33 (1) of POCSO Act in conjuncture with Section 4 (2) of the Code would make it clear that the special court alone can deal with the offences under the POCSO Act. Therefore, the Special Court alone has the power to grant bail to a person accused of having committed the offences under the POCSO Act.

12. Section 10 (3) of the Code of Criminal Procedure provides that the Sessions Judge may make

provision for the disposal of any urgent application in the

event of his absence or inability to act, by an Additional

or Assistant Sessions Judge, or, if there be no Additional

or Assistant Sessions Judge, by the Chief Judicial

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Magistrate, and every such Judge or Magistrate shall be deemed to have jurisdiction to deal with any such application.

13. It is very much clear from a bare reading of Section 10 (3) of the Code that the power for authorisation is vested by the said Section only with the Sessions Judge and not with the Special Judge. In this case, the Special Judge as per Annexure - VI authorised the Sub Judge-cum-Chief Judicial Magistrate, Amini to deal with the POCSO matters during the absence of the Special Judge, Kavarathy under Section 10 (3) of the Code. Section 10 (3) of the Code confers power on the Sessions Judge and not on the Special Judge. It is true

that the Sessions Judge, Kavarathy is also a Special

Judge. That does not mean that the Special Judge gets

jurisdiction under Section 10 (3) of the Code. There can

be no doubt that no court can be authorised to deal with

the POCSO matters and no court can act as a special

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court without any notification as provided under Section 28 of the POCSO Act. In view of the above reason, the direction issued under Annexure-VI could not confer power on the Assistant Sessions Judge, Amini to act as a Special Court for any purpose.

14. The learned Assistant Sessions Judge passed Annexure-VIII Order on the strength of Annexure -VI. Since the learned Special Judge, Kavarathi had no power to issue any such direction, the conferring of power on the Assistant Sessions Judge, Amini, to deal with the matters under the POCSO Act, cannot be said to be legal and correct. Consequently, the Assistant Sessions Judge, Amini had no jurisdiction at all to deal with the matters

under the POCSO Act. In view of the above reason, the

bail granted by the learned Assistant Sessions Judge as per

Annexure-VIII Order to the respondents herein cannot be

sustained, and consequently, I set aside the same. However,

the present situation has arisen not due to any fault of the

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respondents herein. Therefore, the respondents herein shall be at liberty to approach the Special Court concerned and apply for regular bail. If the respondents surrender before the regular court within 15 days of receipt of this order and apply for regular bail, the respondents shall be granted regular bail by the Special Court on such terms and conditions as the Special Court may deem fit and proper.

In the result, this Crl. M.C. stands allowed.

Sd/-B. SUDHEENDRA KUMAR,

JUDGE.

ani/

