

H.C.P.(MD)No.1423 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.10.2025

CORAM:

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

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Uma Maheshwari

... Petitioner / Wife of detenu

-VS-

1. The Principal Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai.
2. The District Collector and District Magistrate,
Tirunelveli District,
Office of the District Collector,
Tirunelveli.
3. The Superintendent of Police,
Tirunelveli District, Tirunelveli.
4. The Inspector of Police,
Mukkudal Police Station,
Tirunelveli, Tirunelveli District.
5. The Superintendent,
Central Prison, Palayamkottai,
Tirunelveli District.



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6. The Inspector General of Police,
South Zone, Madurai.

7. The Inspector General of Police,
Central Zone, Trichy. ... Respondents
[R6 and R7 are *suo motu* impleaded vide
order of this Court dated 15.09.2025]

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the records relating to the Detention Order passed by the 2nd respondent in M.H.S.Confdl.No. 178/2024 dated 10.10.2024 and quash the same as illegal and direct the respondents to produce the body or person of the detenu by name Sivakumar, S/o.Durai, aged about 38 years, now detained at Central Prison, Palayamkottai before this Court and set him at liberty.

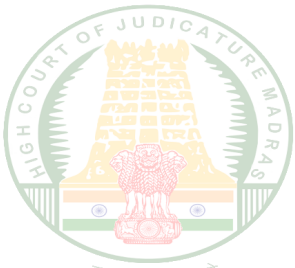
For Petitioner : Mr.R.Maheswaran

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

(Order of the Court was made by **C.V.Karthikeyan, J.**)

The petitioner is the wife of the detenu *viz.*, Sivakumar, aged about 38 years. The detenu has been detained by the second respondent in M.H.S.Confdl.No.178/2024, dated 10.10.2024, holding him to be a



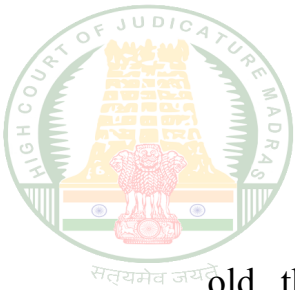
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'Sexual Offender', as contemplated under Section 2(ggg) of the Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. The only ground raised by the learned counsel for the petitioner is that the detaining authority had relied on the fact that, in a similar case (Cr.M.P.No.2258 of 2021), the Special Court for Trial of Cases under the POCSO Act, Tirunelveli, had granted bail. The learned counsel submitted that, in the present case, the bail petition filed by the detenu was still pending. He contrasted the facts of the present case with those of the case relied upon by the detaining authority, noting that in the earlier case, the victim was 14 years old and the accused was a 21-year-old boy. In contrast, in the present case, although the victim was also about 14 years



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old, the detenu is 38 years old, married, and has two children. It was alleged that he had committed the offence of aggravated penetrative sexual assault on multiple occasions. The learned counsel therefore argued that there was no likelihood of the detenu being released on bail.

4. However, we must hold that an exactly similar case can never be found by the detaining authority. The authority can only consider cases involving offences of a similar nature in which bail had been granted, and from such precedents, infer the possibility of bail being granted to the detenu. We, therefore, reject this ground raised by the learned counsel for the petitioner.

5. We had also called for the records relating to the representation submitted by the detenu, along with the dates on which it had been considered by the authorities. The relevant details were forwarded by the learned Additional Public Prosecutor. A perusal of the same reveals that the representation was examined at all levels without any delay. No other grounds were raised by the learned counsel for the petitioner.



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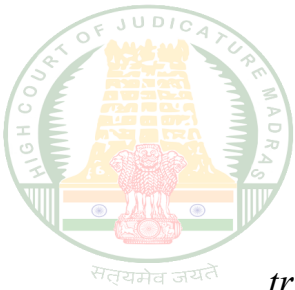
6. During the course of the hearing, we were deeply disturbed to note that, despite the completion of investigation and the filing of a charge sheet by the prosecution, which has been taken cognizance of as Spl.S.C.No.29 of 2024 by the Special Court for POCSO Act Cases, Tirunelveli, the trial has not yet commenced.

7. When the Habeas Corpus Petition was taken up for hearing on 15.09.2025, we passed the following order:-

"5. The Inspector General of Police, South Zone, Madurai and the Inspector General of Police, Central Zone, Trichy may file independent affidavits about the steps taken to give necessary instructions to the Investigating Officers in cases relating to the Sexual Offences, wherein detention orders have been passed to ensure that the evidence of the victim child and the defacto complainant are recorded within the period of detention. We find that the trial is being protracted and dragged till the detention period comes to an end, which defeats the very purpose of passing the detention order.

* * *

7. They may also take a statistics of the number of cases in which the detention orders have been passed categorising the detenues as sexual offenders and also examine the flow of the



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trial in the Sessions Cases in those matters, to find out whether the trial is being deliberately protracted and if such protraction is also due to the reason that the Investigating Officer was not proactive."

7. We had received independent affidavits from both the officials. The statistics disclosed therein are alarming.

8. The Inspector General of Police, South Zone, Madurai, submitted data regarding the total number of pending cases in ten Districts, namely, Madurai, Virudhunagar, Dindigul, Theni, Ramanathapuram, Sivagangai, Tirunelveli, Tenkasi, Thoothukudi, and Kanniyakumari as well as in Tirunelveli City. The total number of pending cases stands at 343, and the status of each case has also been furnished.

9. Upon perusal, we find that, except in a handful of cases, the victim child has not been examined within the period of 30 days from the date of cognizance of the final report, as mandated under Section 35 of the POCSO Act, 2012.



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10. Similarly, the Inspector General of Police, Central Zone, Trichy, has filed an independent affidavit and status report listing the total number of cases pending in each District under his jurisdiction. We note that 52 cases are pending.

11. Even from the statistics placed before us, it is evident that, barring a negligible number of cases, the Presiding Officers of the Special Courts constituted for POCSO Act cases have failed to examine the victim child within 30 days from the date of cognizance of the charge sheet.

12. The learned Additional Public Prosecutor had placed reliance on the judgment of the Hon'ble Supreme Court in **Alakh Alok Srivastava vs. Union of India and others** reported in (2018) 17 SCC 291, wherein at Paragraphs 17 and 18, the Hon'ble Supreme Court had held as follows:-

"17. Section 35 provides for recording of the evidence of the child and disposal of the cases. The same being important for the present purpose, it is quoted here:



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"35. Period for recording of evidence of child and disposal of case.- (1) The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.

(2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence."

18. The aforesaid provisions make it clear as crystal that the legislature has commanded the State to take various steps at many levels so that the child is protected and the trial is appropriately conducted."

Thereafter, the Hon'ble Supreme Court had issued the following directions:-

"25. It is submitted by Mr Srivastava that in both the States, the cases are pending at the evidence stage beyond one year. We are absolutely conscious that Section 35(2) of the Act says "as far as possible". Be that as it may, regard being had to the spirit of the Act, we think it appropriate to issue the following directions:



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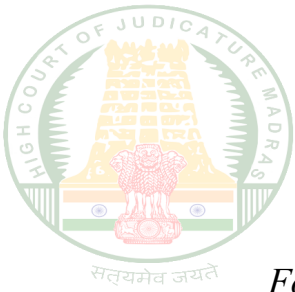
25.1. *The High Courts shall ensure that the cases registered under the Pocso Act are tried and disposed of by the Special Courts and the Presiding Officers of the said courts are sensitised in the matters of child protection and psychological response.*

25.2. *The Special Courts, as conceived, be established, if not already done, and be assigned the responsibility to deal with the cases under the Pocso Act.*

25.3. *The instructions should be issued to the Special Courts to fast track the cases by not granting unnecessary adjournments and following the procedure laid down in the Pocso Act and thus complete the trial in a time-bound manner or within a specific time-frame under the Act.*

25.4. *The Chief Justices of the High Courts are requested to constitute a Committee of three Judges to regulate and monitor the progress of the trials under the Pocso Act. The High Courts where three Judges are not available the Chief Justices of the said courts shall constitute one Judge Committee.*

25.5. *The Director General of Police or the officer of equivalent rank of the States shall constitute a Special Task*



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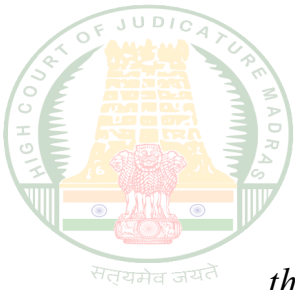
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Force which shall ensure that the investigation is properly conducted and witnesses are produced on the dates fixed before the trial courts.

25.6. Adequate steps shall be taken by the High Courts to provide child-friendly atmosphere in the Special Courts keeping in view the provisions of the Pocso Act so that the spirit of the Act is observed."

13. The learned Additional Public Prosecutor had further placed reliance on the judgment of the Hon'ble Supreme Court in **In Re: Alarming Rise in the Number of Reported Child Rape Incidents** reported in **2025 SCC OnLine SC 1130 : 2025 INSC 695**, wherein it had been directed as follows:-

"6. In our opinion, since the timelines have been stipulated under the POCSO Act for all stages right from the stage of Investigation up to the stage of Trial, the same must be adhered to as far as possible. Because of the inadequacy of the number of exclusive Courts for the POCSO Cases, the said timelines mandated in the Act for completion of the trials are not being maintained. It is therefore expected that the Union of India and the State Governments shall take appropriate steps to sensitize



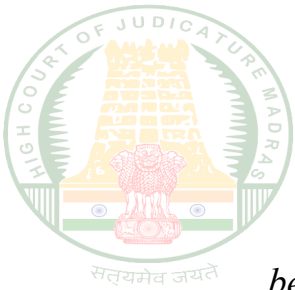
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the officials associated with the investigation of POCSO cases, and also to create dedicated Courts to try POCSO Cases on top priority basis, and to see to it that the chargesheets are filed within the mandatory period stipulated in the Act, and the Trials are completed within the time frame as contemplated in the Act."

14. The learned Additional Public Prosecutor had also placed reliance on the judgment of the Division Bench of Karnataka High Court in **Hanumantha Mogaveera vs. State of Karnataka, by Women Police Station, Udupi** reported in **2021 SCC OnLine Kar 12300 : ILR 2021 KAR 3469**, wherein it had been held as follows:-

"24. On a reading of sub-Section (1) of Section 35 of the POCSO Act, it is observed that there is a mandate for the Special Court to record the evidence of the child within a period of thirty days of taking cognizance of the offence by the Special Court. That is the ideal mandate to be followed. But, if the recording of the evidence does not take place within the stipulated period, it does not mean that the evidence recorded thereafter would lose its sanctity or is to be discarded. This is because, the provision itself speaks that if there is a delay in recording the evidence of the child, the Special Court has to give reasons for the delay. This stipulation would imply that recording evidence of the child

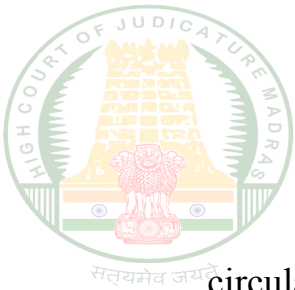


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beyond a period of thirty days from the date of taking cognizance of the offence by the Special Court is not of any lesser sanctity, but if for any reason, the same is not complied with, then it must be recorded by the Special Court. In other words, the reasons must be beyond the control of the Special Court or the reasons were such, which prevented the recording evidence of the child within the stipulated period. Thus, the reasons must be strong enough for being accepted and sufficient in law to absolve the Special Court for not recording the evidence of the child within the stipulated period. But, if for any reason the evidence of the child is not recorded within the stipulated period, then the same cannot be discarded only on that score."

15. In view of the fact that, at least in the Districts falling under the jurisdiction of the Madurai Bench of the Madras High Court, there has been a total absence of compliance with the mandatory provision under Section 35 of the POCSO Act, 2012, it is imperative that the High Court issues a Circular reminding the Presiding Officers of the Special Courts about the necessity to comply with the said provision in letter and spirit. We would also call upon the Registrar General, High Court, Madras, to reissue the circular issued as Roc.No.543/RG/2023/POCSO, dated 12.07.2024. This is necessary as the best practices prescribed in the said



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circULAR for handling POCSO cases have evidently not been followed in the majority of cases by the Presiding Officers of the Special Courts for POCSO Act cases.

16. The Director of the Tamil Nadu State Judicial Academy is also requested to conduct a special training session for the Presiding Officers of the Special Courts dealing with cases under the POCSO Act, 2012. This session shall aim to sensitize them to:

- (a) the statutory requirement to record the evidence of the child victim within 30 days from the date of cognizance of the charge sheet; and
- (b) the importance of promptly taking cognizance of charge sheets, including those filed electronically, within a reasonable time and without undue delay.

17. The reports and statistical data submitted by Mr.Prem Anand Sinha, I.P.S., Inspector General of Police, South Zone, Madurai, and Mr.K.Joshi Nirmal Kumar, I.P.S., Inspector General of Police, Central Zone, Trichy, are taken on record.



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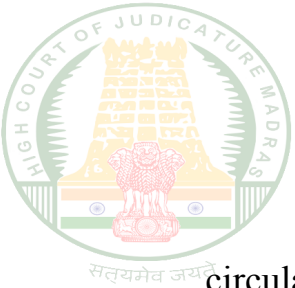
18. We place on record our deep appreciation for the assistance rendered by Mr.A.Thiruvadikumar, learned Additional Public Prosecutor, in effectively assisting this Court, and also to the aforementioned Police Officials for their efforts in collating and submitting the relevant data. This data, when further analysed by the Director, Tamil Nadu State Judicial Academy, Chennai, may bring to light systemic issues in the judicial process, particularly:-

(i) The failure to promptly take cognizance of charge sheets filed electronically; and

(2) The non-examination of the victim child's evidence within the stipulated 30 days period from the date of cognizance, as mandated under Section 35 of the POCSO Act, 2012.

19. With the above observations, this Habeas Corpus Petition stands dismissed.

20. The Registry is directed to annex the reports and statistical data submitted by the Inspector General of Police, South Zone, Madurai, and the Inspector General of Police, Central Zone, Trichy, to this order, and



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circulate copies thereof to all concerned officials along with the certified copy of this order.

NCC : Yes / No

Index : Yes / No

Speaking order / Non-speaking order
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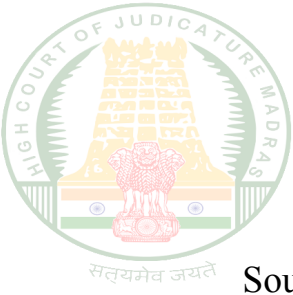
[C.V.K., J.]

[R.V., J.]

10.10.2025

To

1. The Principal Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai.
2. The District Collector and District Magistrate,
Tirunelveli District,
Office of the District Collector,
Tirunelveli.
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Tirunelveli District, Tirunelveli.
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6. The Inspector General of Police,

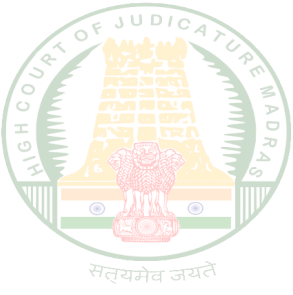


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- South Zone, Madurai.
7. The Inspector General of Police,
Central Zone, Trichy.
8. The Sessions Judge,
Special Court for POCSO Act Cases,
Tirunelveli.
9. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- Copy to:-

1. The Registrar General,
Madras High Court,
Chennai – 600 104.
2. The Additional Registrar General,
Madurai Bench of Madras High Court,
Madurai.
3. The Director,
Tamil Nadu State Judicial Academy,
Chennai – 600 028.



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C.V.KARTHIKEYAN, J.
and
R.VIJAYAKUMAR, J.

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