

VERDICTUM.IN

ITEM NO.10

COURT NO.8

SECTION II-C

S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (CrI.) No(s). 13943/2023
(Arising out of impugned final judgment and order dated 22-05-2023
in WP No. 2331/2023 passed by the High Court Of Karnataka At
Bengaluru)

H. EKANTHAI AH

Petitioner(s)

VERSUS

THE STATE OF KARNATAKA & ANR.

Respondent(s)

(IA No. 214677/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT

IA No. 49894/2024 - EXEMPTION FROM FILING O.T.

IA No. 214674/2023 - EXEMPTION FROM FILING O.T.

IA No. 78138/2024 - INTERVENTION APPLICATION

IA No. 49893/2024 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES

IA No. 214672/2023 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

WITH

SLP(CrI) No. 1565/2024 (II-C)

(FOR ADMISSION and I.R. and IA No.16039/2024-EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT and IA No.16040/2024-EXEMPTION FROM
FILING O.T. and IA No.16038/2024-PERMISSION TO FILE PETITION
(SLP/TP/WP/..))

SLP(CrI) No. 4803-4804/2024 (II-C)

(IA No.65919/2024-CONDONATION OF DELAY IN FILING and IA
No.65920/2024-EXEMPTION FROM FILING O.T.)

Date : 23-04-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE VIKRAM NATH

HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Petitioner(s) Mr. P B Suresh, Sr. Adv.
Mr. Sughosh Subramanyam, Adv.
Ms. Sanskruti Samal, Adv.
Mr. Kartik Pant, Adv.
Mr. Shubhanshu Gupta, Adv.
Mr. Shashank Chaturvedi, Adv.

VERDICTUM.IN

Mr. Chaitanya, AOR

Mr. S. Nagamuthu, Sr. Adv.
Mr. M.P. Parthiban, AOR

Ms. Aparna Bhat, AOR
Ms. Karishma Maria, Adv.

For Respondent(s) Mr. Avishkar Singhvi, A.A.G.
Mr. D. L. Chidananda, AOR

Mr. Shailesh Madiyal, Sr. Adv.
Mr. Mahesh Thakur, AOR
Ms. Anusha R, Adv.
Ms. Divija Mahajan, Adv.
Mr. Ranvijay Singh Chandel, Adv.
Mrs. Geetanjali Bedi, Adv.

Mr. C B Gururaj, Adv.
Mr. Animesh Dubey, Adv.
Mr. Archita M Prajapati, Adv.
Mr. K P Singh, Adv.
M/S. Gururaj & Nayak, AOR

Mr. Sidharth Luthra, Sr. Adv.
Mr. Kbk Swamy, Adv.
Mr. Honappa S., Adv.
Mr. Ayush Agarwal, Adv.
Mr. Mrigank Prabhakar, AOR
Ms. Amisha Devi, Adv.

Mr. Kailas Bajirao Autade, AOR

UPON hearing the counsel the Court made the following
O R D E R

SLP(Cr1) No 13943/2023

Learned AAG appearing for the State of Karnataka prays for and is granted a week's time to file counter affidavit which according to him is ready and has been sent for a minor clarification. The petitioner will have a week thereafter to file rejoinder affidavit.

VERDICTUM.IN

List again on 14th May, 2024.

SLP(Cr1) No. 1565/2024

Learned counsel appearing for the parties in particular, the Advocates-on-Record are requested to erase/redact the names of the victims wherever they have occurred in the records filed by them before this Court. This applies to the learned AOR for respondents also in their pleadings. This may be done within a week. Registry will cooperate in the said exercise.

Father of one of the victims has filed the present petition assailing the correctness of the order dated 8th November, 2023 passed by the High Court of Karnataka at Bengaluru in Criminal Petition No. 5031/2023 with Criminal Appeal No. 1230/2023 whereby the High Court has allowed the Criminal Appeal No. 1230/2023 as also Criminal Petition No. 5031/2023 and has granted bail to respondent no. 3(herein) subject to conditions mentioned in the operative portion of the impugned order.

We have heard the matter at great length.

Ms. Aparna Bhat, learned counsel for the petitioner, apart from other arguments had vehemently submitted that the respondent no. 3 being an affluent

VERDICTUM.IN

and influential person, if allowed to remain on bail in a case where victims are belonging to an oppressed class and weaker section of the society, there is every likelihood that he may adversely influence the victims and other witnesses of fact. The State has supported the above submissions of Ms. Bhat. On the other hand, Mr. Luthra, learned senior counsel appearing for respondent no. 3 submits that above apprehension is totally misconceived. The respondent no. 3 was released on bail on 08.11.2023 more than five months back, but no such complaint has been made by any party of either threatening or influencing the victims or witnesses.

Having considered the submissions and perused the material on record, we are prima facie of the view that in order to ensure a fair trial not only to the accused but also to the victims, it would be in the interest of justice that the respondent no. 3 may remain in custody during the time the witnesses of fact are examined.

In all there are 84 witnesses mentioned in the charge sheet. According to the learned AAG appearing for the State out of these 84 witnesses, there are about 12 to 13 witnesses which include the victims, their parents, complainants and other Officers or Workers/Employees of the Math who are likely to be

VERDICTUM.IN

influenced by respondent no. 3. As such, they may be examined at a time when respondent no. 3 is in custody. Mr. Luthra, learned senior counsel objected and submitted that there are maximum 9 to 10 such witnesses. We leave it to the wisdom of the Public Prosecutor to decide the said number by identifying its witnesses of fact.

The High Court has passed a very detailed order impugned in this petition which according to learned counsel for the parties has touched upon the merits of the case. We are not inclined to pass any detailed order, as it may ultimately affect the trial in some way or the other.

Another aspect which needs to be mentioned is that Respondent no. 3 filed petition before the High Court challenging the charge order. The High Court by an order dated 11th March, 2024 passed in Criminal Petition Nos. 4511 of 2023 and 4531 of 2023 quashed certain charges and sustained some. The charges which have been quashed are the following five charges :-

1. Sections 3 and 7 of Religious Institution Prevention of Misuse Act, 1988;

2. Sections 3(1)(w)(i)(ii), 3(2)(v)(v-a) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989;

VERDICTUM.IN

3. Section 75 of the Juvenile Justice (Care and Protection of Children) Act 2015;

4. Gang rape – Section 376DA of the IPC; and

5. Destruction of evidence – Section 201 of the IPC

The remaining three charges which have been sustained are following: -

1. Section 376(2)(n) of the IPC;

2. Section 376(3) of the IPC; and

3. Sections 5 and 6 of the POCSO Act, 2012.

Further direction issued by the High Court in its order dated 11th March, 2024 is that the Trial Court/Special Court will frame the charges afresh and thereafter proceed with the trial.

Another issue which needs to be addressed is regarding the regular appointment of the Presiding Officer of the Special/POCSO Court which at present is said to be vacant and the charge/work of the Special Court is with another Officer as an additional charge.

Shri Avishkar Singhvi, learned AAG appearing for the State of Karnataka, upon instructions, has stated that regular posting of an Officer has already been

VERDICTUM.IN

made for the Special/POCSO Court and the Officer will be joining in the first week of May, 2024.

The directions which we are going to issue do not mean that the prosecution will examine only these 12-13 witnesses during the time which we are fixing. That is not the intention. The idea is to expedite the trial and conclude it at the earliest. However, while doing so, make it sure that the relevant witnesses of fact are examined at a time when the respondent no. 3 is in judicial custody.

In view of the above facts and circumstances as recorded and considering the submissions advanced by the parties the petition is disposed of with the following directions :-

1. The impugned order granting bail to the respondent no. 3 shall remain in abeyance or, in other words, the effect and operation of the impugned order shall remain stayed. The period of stay will be initially for a period of four months from today, which may be extended for a further period of two months if required.
2. Respondent no. 3 will surrender within a week from today before the Trial Court.

VERDICTUM.IN

3. The Trial Court forthwith will frame the charges afresh in the light of the order dated 11th March, 2024 passed by the High Court referred to above within a week from the date the Regular Officer joins the Special Court at Chitradurga.
4. Prosecution will submit the list of 12-13 witnesses of fact forthwith before the Trial Court, in any case, at the time of framing of charges.
5. The Trial Court, after framing the charges, will proceed to conduct the trial as expeditiously as possible and if necessary, on day to day basis and ensure that the witnesses of fact which the prosecution wishes to produce are examined within four months.
6. Prosecution will make sure that it will not seek any adjournments and will produce its witnesses on the dates given by the Trial Court.
7. Respondent no. 3 and other accused will extend all cooperation in the trial and not seek any adjournments except for very exceptional reasons.

VERDICTUM.IN

8. Trial Court will observe the conduct of the parties and if it finds that if any of the parties are unnecessarily trying to delay the trial, it shall make a note of the same and forward it to this Court.
9. If for no reason attributable to the accused or to the prosecution, the examination of the aforesaid 12 to 13 witnesses of fact is not completed within a period of four months, the Trial Court will send a report to this Court seeking extension of time for two months and the Registry will list the matter accordingly.
10. If the 12-13 witnesses, list of which is provided by the Public Prosecutor are examined within four months, the respondent no. 3 would be released on the completion of four months. However, if the time is extended for two months further then respondent no. 3 would be released on completion of period of six months.
11. Further, the general direction is issued to Trial Court to conclude the

VERDICTUM.IN

trial at the earliest within the aforesaid period or within a period of one year.

With the aforesaid directions, the Special Leave Petition is disposed of.

Registry will forward a copy of the order to the Trial Court. It will be open for the parties to file the same before the Trial Court, where upon the Trial Court will act accordingly.

Pending application(s), if any, shall stand disposed of.

SLP(Cr1.) No. 4803-4804/2024

Learned counsel appearing for respondent nos. 1, 2 and 3 pray for and are granted four weeks' time to file counter affidavit. Petitioner(s) to file rejoinder affidavit within three weeks thereafter.

List on 16th July, 2024.

De-tag the present matter from SLP(Cr1.) No. 13943/2023.

(SONIA BHASIN)
COURT MASTER (SH)

(RANJANA SHAILEY)
COURT MASTER (NSH)