

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2024

CORAM :

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM**  
**AND**  
**THE HONOURABLE MR. JUSTICE V.SIVAGNANAM**

**H.C.P.Nos.2408 & 2334 of 2024**

**Suo Motu HCP.No.2408 of 2024**

Suo Motu

... Petitioner

***Vs.***

1.The Deputy Commissioner of Police,  
Anna Nagar Range,  
Chennai – 600 040.

2.The Inspector of Police,  
All Women Police Station,  
Anna Nagar,  
Chennai – 600 040.

... Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, for directing the respondents herein to produce the body of the minor rape victim and her parents before this Court and set them at Liberty.

For Petitioner : High Court of Madras

For Respondents : Mr.Hasan Mohamed Jinna  
State Public Prosecutor  
asst by Mr.E.Raj Thilak  
Additional Public Prosecutor

**HCP.No.2334 of 2024**

Sumathi

... Petitioner

***Vs.***

1.The Deputy Commissioner of Police,  
Anna Nagar Range,  
Chennai – 600 040.

2.The Inspector of Police,  
All Women Police Station,  
K.4, Police Station,  
Anna Nagar, Chennai – 600 040.

3.Raji  
The Inspector of Police,  
AWPS Anna Nagar,  
K.4 Police Station,  
Anna Nagar, Chennai – 600 040.

... Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, directing the respondent police particularly the 1st respondent to produce the minor girl before this Court and hand over to the parents and to provide medical treatment to the victim minor girl to give proper protection to the minor girl and her family and to provide adequate compensation to the victim girl as per POSCO Act and to direct the 1st respondent to initiate disciplinary proceedings/suitable action against the errering police officials as per law and pass all such further or other orders as this Court.

For Petitioner : Mr.R.Sampath Kumar

For Respondents : Mr.Hasan Mohamed Jinna  
State Public Prosecutor  
asst by Mr.E.Raj Thilak  
Additional Public Prosecutor

**COMMON ORDER**

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

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**I. BACKGROUND ON SUO MOTU:**

Two petitions are placed before us for consideration. First one is the *Suo Motu* petition initiated by this Court at the instance of Mr.A.P.Suryaprakasam, learned Advocate practicing in the High Court of Madras. The said advocate has given a letter and a petition was forwarded to the Hon'ble Acting Chief Justice for passing appropriate orders. The Hon'ble Acting Chief Justice directed the Registry to list the matter before this bench. Subsequently, another HCP.No.2334 of 2024 has been instituted by the mother of the victim minor girl aged about 10 years.

2. Mr.A.P.Surya Prakasam, the learned counsel, in his letter, has stated that the victim minor girl aged about 10 years is a rape victim and her parents were tortured by the Inspector of Police in All Women Police Station, Anna Nagar at Chennai. He has stated that the minor victim girl is to be examined by the medical board and to be referred for counseling through experts and compensation is to be paid and the police officers guilty of committing such atrocities upon the minor victim girl and her parents are to be suitably punished. Along with the letter, Mr.A.P.Surya Prakasam, the learned

counsel relied on certain newspaper publications, which would reveal that "*Cop beats minor rape survivor's parents; Culprit not yet arrested*" etc.,

## **II. VICTIM SIDE VERSION:**

3. The minor victim girl was studying 6th standard and residing along with her parents at Anna Nagar, Chennai. On 29.08.2024, the mother of the victim girl noticed bad smell from the minor girl, aged about 10 years and immediately took her to the nearby Doctor Mrs.Kalanithi, having clinic at Door No.19A, 11th Main Road, Anna Nagar, Chennai - 40. The doctor examined the minor girl and found that she was sexually abused by some person. Immediately, she referred the minor girl to Government Kilpauk Medical College Hospital and the mother took her minor girl to Government Kilpauk Medical College Hospital on 29.08.2024. The duty Doctors examined and admitted the minor victim girl in the hospital. Intimation was provided to the Child Welfare Committee and All Women Police Station. The Inspector of Police Mrs.Raji/3rd respondent in HCP.No.2334 of 2024 came to the Government Kilpauk Medical College Hospital and received a complaint from the mother of the victim girl.

4. The mother of the victim girl was asked by the Inspector of the

Police to go to her house and bring Aadhar card of herself and minor daughter and come to K4 police Station, Anna Nagar. The mother went back to her house. At that time, during the midnight hours, the 3<sup>rd</sup> respondent recorded the statement of the victim minor girl aged about 10 years in the common corridor of the Kilpauk Medical College Hospital and nearby the common lift. The entire statement was recorded and the mother of the minor victim girl was not present at the time of examination. The mother states that she was unaware of the statement recorded by the Inspector of police from the minor victim girl. When the mother of the minor victim girl reached K4 Police Station, one Mr.Sathish residing next door to the resident of the victim girl was sitting in the Police Station. The Inspector of Police was getting some information from Mr.Sathish and allowed him to sit on the chair in the Police Station. The Inspector of Police called the mother inside the room available in the station and beaten her and took her cell phone for no reason. The Inspector of Police allowed the mother of the victim girl to stay in the Police Station till mid night upto 01.00 a.m. The Inspector of Police has given instruction to the policemen not to allow the mother to go out without her permission.

5. The mother asked the station official to allow her to meet her minor daughter, who was taking treatment in Kilpauk Medical College

Hospital. After making a call, the station officials allowed the mother to go to the hospital, wherein the mother of the victim girl found that the Mrs.Raji/3<sup>rd</sup> respondent enquired the minor victim girl in her absence and recorded some statements. The enquiry was going upto 01.00 a.m., with the minor girl.

6. One lady Ms.Kavitha from Child Helpline came to Kilpauk Medical College Hospital on 31.08.2024 and enquired about the minor daughter and took videograph in her cellphone for the reason unknown. Another woman came from 181 Helpline, but not conducted any enquiry. The Inspector of Police came to the hospital, discussed with the duty Doctor and left the hospital. Thereafter, the Inspector of Police asked the father of the minor girl to be present before the Police Station on 30.08.2024. A gang of 15 persons including Mr.Sudhagar (politician) gave counter against the complaint given by the mother of the victim girl. The Inspector of Police made an attempt to compromise. The father of the victim girl disagreed for any compromise. Thereafter, the Inspector of Police caught the hands of the father of the minor victim girl and beaten him in the Police Station. The father told that he is doing masonry work and if hands are broken, he will not be in a position to earn for his family. During that point of time, Mr.Sathish was sitting on the chair and witnessing the incident upto 04.00 p.m. The father of the girl was kept in the

Police Station without any valid reason.

7. The mother of the victim girl thereafter contacted Dr.Sampath Kumar, learned counsel appearing for them, who inturn intimated the incidents to the Joint Commissioner of Police, South Zone and Deputy Commissioner of Police, Anna Nagar District.

### **III. PROSECUTION SIDE VERSION:**

8. The prosecution side states that the victim's mother complaint was received and FIR has been registered on 30.08.2024 at 20.20 hours in W7, All Women Police Station in Crime No.33 of 2024 under Sections 5(1)(m) r/w 6 of POCSO Act, 2012 and the victim's medical treatment and examination was ensured in Kilpauk Medical College Hospital at Chennai. The statement of staff nurse Ms.Tamil Azhagu was recorded. The victim statement was recorded thereafter in the presence of the victim's father and the nurse attending the victim. The suspect Mr.Sathish was asked to appear and he was interrogated. The victim's mother came to the Police Station on 30.08.2024 around 22.54 hours and left the station around 01.08 a.m. She was accompanied by her relatives Alagesan, Selvam and Kavitha. At that time, victim's father was accompanying the victim in the hospital. The respondents states that the allegations raised against the Police Authorities are incorrect. The allegation



raised against the Police Officials regarding the ill treatment and harassment are after thoughts. The Inspector of Police Mrs.Raji/3<sup>rd</sup> respondent was transferred from W7, All women Police Station and thereafter, she was posted at All Women Police Station, Koyembedu. The conversation between the Inspector of Police and the victim girl was broadcasted in social media and separate cases are registered. The victim girl's mother stated that, for about 10 days they were not able to work to lead their livelihood. Considering the difficult situation, on humanitarian ground, the Inspector of Police tried to give Rs.1000/- and it was refused by the victim's mother. The statement that wrong information about the minor victim girl was conveyed to the School Principal is incorrect.

9. Admittedly the suspect accused Mr.Sathish was arrested on 12.09.2024 and remanded on 13.09.2024. The police have narrated all further actions taken by them.

#### **IV. ARGUMENTS ON BEHALF OF THE PETITIONER:**

10. Dr.R.Sampath Kumar, learned counsel appearing on behalf of the petitioner would submit that the respondent police committed several illegalities and irregularities in registering the criminal case and during

examination of the minor victim girl. The Police made an attempt to protect the real accused, who has some political support. The minor girl was subjected to harassment continuously, both in the Government Kilpauk Medical College Hospital during midnight hours and victim girl's father was brutally attacked by the police in the police station. The mother of the victim girl was also harassed and not even permitted to stay along with the minor victim girl during the recording of statement in the public premises at Kilpauk Medical College Hospital. Police are now attempting to cover up their misdeeds and they are proceeding on the line to support the accused persons. The victim girl and her parents may not get fair treatment from the hands of the police and they lost confidence on the police about their actions, behavior and manner in which the case was registered and investigated. Therefore, suitable actions ought to be initiated against the police officials and further to support the interest of the minor victim girl.

**V. ARGUMENTS ON BEHALF OF THE PROSECUTION:**

11. Mr.Hasan Mohamed Jinna, learned State Public Prosecutor would oppose by stating that, on receipt of information the Inspector of Police, K4 - All Women Police Station, Anna Nagar registered FIR and attended the minor

victim girl in the Kilpauk Medical College Hospital and recorded her statement during the midnight at 11.30 p.m. Regarding broadcasting of the conversation between the Inspector of Police and the victim girl, separate actions are initiated and criminal cases are registered against the Youtuber and one Journalist. The occurrence took place on 29.08.2024 and FIR was registered on 30.08.2024. The minor victim girl named one Mr.Mukesh and he was arrested on 12.09.2024. On 02.09.2024, the police gave requisition for recording 164 statement and the learned Magistrate passed an order on 11.09.2024 for recording 164 statement. The prosecution preponed the recording of statement on 09.09.2024 and statement of the minor victim girl was recorded. Thereafter, accused was arrested on 12.09.2024. Thus, police have initiated actions by following the procedure and they will continue the investigation and initiate all appropriate actions.

#### **VI. LEGAL POSITIONS:**

12. The children by reason of their physical and mental status need special safeguards and care. Child victims of sexual abuse are to be treated with compassion and dignity. All concerned authorities associated with Criminal Justice System need to be sensitized about their protective role to prevent further victimization of child victims.

13. The police have specific duties and responsibilities to ensure that cases involving child victims of sexual offenses are handled sensitively and effectively.

**VII. PROCEDURES TO BE FOLLOWED IN A CHILD VICTIMISATION:**

**A. IMMEDIATE REGISTRATION OF FIR:**

(a) On a complaint of a cognisable offence involving a child victim being made, concerned police officer shall record the complaint promptly and accurately.

(b) The police are required to register a First Information Report (FIR) as soon as a complaint is filed. Delays in registration are not permitted, and the process should be expedited.

(c) The investigation of the case shall be referred to an officer not below the rank of Sub-Inspector, preferably a lady officer, sensitized by imparting appropriate training to deal with child victims of sexual crime.

(d) Failure to register First Information Report in respect of offences punishable Under Sections 4, 6, 8, 10 & 12 of POCSO Act shall attract penal liability under Section 166-A(c) of the Indian Penal Code (Section 199 of BNS, 2023) as the aforesaid offences are cognate and/or *pari materia* to the Penal Code offences referred to in the said penal provision.

**B. ENSURING PRIVACY AND CONFIDENTIALITY:**

Officer-in-Charge of the police station and the Investigating Officer in the case including the Special Juvenile Police Unit shall ensure that the identity of the victim is not disclosed in the course of investigation, particularly at the time of recording statement of the victim under Section 24 of the POCSO Act (which as far as practicable may be done at the residence or a place of choice of the victim or that of his/her parents/custodian, as the case may be), his/her examination before Magistrate under Section 25 of the Act, forwarding of the child for emergency medical aid Under Section 19(5) and/or medical examination under Section 27 of the Act.

**C. CHILD-FRIENDLY ENVIRONMENT:**

(a) Keeping in view the provisions under Section 19, 24 and 33 of the POCSO Act, 2012, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Juvenile Justice Model Rules, 2016, every Police Station/Special Court should have either a child friendly room or corner atmosphere, where children who are victims under the POCSO Act, 2012 can be interacted with in a sympathetic manner.

(b) The National Commission for Protection of Child Rights developed guidelines for establishment of child friendly police stations along with other

stakeholders. The Tamil Nadu Juvenile Justice (Care and Protection of Children) Rules, 2017 guidelines will help in creating the child friendly premises where children will feel more at ease to express their problems openly to the concerned officers.

**D. OBTAINING CONSENT:**

(a) In cases where the child is to be medically examined or interviewed, the police must obtain consent from the child's guardian or legal representative, and the procedures should be explained clearly.

(b) The parents of the child or any other person in whom the child reposes trust and confidence will be allowed to remain present.

**E. RECORDING OF STATEMENTS:**

(a) Section 24(5) of the POCSO Act, which outlines how statements have to be recorded, clearly states that the police should ensure that the identity of the child is protected "from the public, media, unless otherwise directed by the Special Court in the interest of the child." Under 24(1), it also mandates that the police record statements either at the residence of the child or at a place of the child's choice

(b) The child's statement should be recorded in a manner that is

appropriate for their age. The statement should be taken by an officer trained in handling cases involving children.

(c) The Investigating Officer recording the statement of the child victim shall ensure that the victim is made comfortable before proceeding to record the statement and that the statement carries accurate narration of the incident covering all relevant aspects of the case.

(d) In the event of investigation, the Investigating Officer feel the necessity, he may take the assistance of a psychiatrist.

(e) The statement should be recorded promptly without any loss of time.

**F. PROVIDING SUPPORT AND PROTECTION:**

(a) The police are responsible for ensuring the safety and protection of the child during the investigation. This includes protection from the accused and preventing further trauma or harm.

(b) The Investigating Officer has to ensure that at no point should the child victim come in contact with the accused. (Section- 24(3)& 36, POCSO Act r/w Section 273, Cr.P.C.)

(c) Where, the Special Juvenile Police Unit or the local police is notified and circumstances warrant, that the child against whom an offence has been committed, is in need of care and protection, it shall, after recording the reasons

in writing, make immediate arrangement, to give him/her such care and protection, including *admitting the child into a shelter home or to the nearest hospital, within twenty-four hours of the report*, as may be prescribed, as well as carry on investigation to find the legal guardian of the victim, in appropriate cases, as per the facts of the case.

(d) The Police Officer *shall not detain any child at night* in the police station for any reason (**Section-24(4), POCSO Act**)

(e) The Investigating Officer shall ensure that the identity of the child victim is protected from publicity.

**G. INTERACTING WITH CHILD WELFARE AUTHORITIES:**

(a) The police should coordinate with child welfare authorities and organizations to provide the child with necessary support services, including counseling and medical care.

**H. EXPEDITIOUS INVESTIGATION:**

The investigation should be conducted promptly and efficiently, with a focus on minimizing delays that could adversely affect the child victim.



**I. ASSISTING IN COURT PROCEEDINGS:**

The police should assist in preparing the case for court, including presenting evidence and ensuring that the child's testimony is effectively communicated in court while minimizing distress.

**J. TRAINING AND AWARENESS:**

Police officers handling POCSO cases should undergo specialized training to stay updated on the best practices for dealing with child victims and handling such cases with the required sensitivity.

**K. OTHER DUTIES:**

(a) The Investigating Officer shall ensure that the child victim is medically examined at the earliest preferably within 24 hours (in accordance with Section 164A Cr.P.C) at the nearest government hospital or hospital recognized by the Government.

(b) Investigating Officer shall ensure that the investigating team visits the site of the crime at the earliest to secure and collect all incriminating evidence available.

(c) Investigating Officer shall promptly refer for forensic examination of

clothings and articles necessary to be examined, to the forensic laboratory which shall deal with such cases on priority basis to make its report available at an early date.

(d) The investigation of the cases involving sexually abused child may be investigated on a priority basis and completed preferably within 90 days of the registration of the case. The investigation shall be periodically supervised by senior officer/s.

**L. UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD:**

The right of a child to dignity not only requires that the child be protected from offences of sexual assault, sexual harassment and pornography but also requires that the dignity of a child be safeguarded. Disclosure of the identity of a child who is a victim of sexual offences or who is in conflict with the law is in fundamental breach of the right of the child to dignity, the right not to be embarrassed.

14. The provision of Section 23 of POCSO which protects child victims of sexual abuse from unwarranted intrusion into privacy, harassment and mental agony has to be strictly enforced. The provision cannot be allowed to be diluted.

15. With reference to the above mandatory provisions under the POCSO and India being the signatory of the UNITED NATIONS CONVENTION ON THE RIGHTS OF CHILD, 1989, the police officers are expected to be more conscience while dealing with the minor victim children who all are sexually abused.

**VIII. ANALYSIS:**

16. The facts placed by the victim side and the prosecution side are contradicting each other. The victim side speaks about continuous harassment of the minor victim girl aged about 10 years and brutal attack on her father and harassment caused to her mother, during midnight hours in the Police Station and in the Government Kilpauk Medical College Hospital.

17. In the context of the contradictions, we could find that the complaint and the accident register itself revealed the name of the accused on 30.08.2024 itself. The entire investigation conducted by the Inspector of Police / 3<sup>rd</sup> respondent was broadcasted on 07.09.2024 in social media and newspaper publications are made. The Police Officials have not arrested the accused, even at that point of time. There was a prolonged delay in arresting the accused person, despite the fact that the accused is residing next door to the victim girl.

18. The statement of Ms.Tamil Azhagu, Staff Nurse at Government Kilpauk Medical College Hospital recorded under Section 180 (3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 reveals that at the time of examination of the minor victim girl at Government Kilpauk Medical College Hospital in the common corridor and near the lift by the Inspector of Police, the mother of the victim girl was not available.

19. Despite the fact that the accused was named by the victim girl on 30.08.2024, he was arrested only on 12.09.2024. The videograph of recording statement of the victim girl in the corridor of the Government Kilpauk Medical College Hospital was admittedly recorded by the Inspector of Police / 3<sup>rd</sup> respondent. It was aired in social media. The Police registered FIR.No.36 dated 11.09.2024 and FIR.No.39 dated 29.09.2024, after a lapse of several days. The FIR reveals the name of one Youtuber and name of one Journalist and the said actions also raised several doubts in the mind of this Court.

20. As per the counter statement filed by the Deputy Commissioner of Police, Anna Nagar District, the Child Helpline member Ms.Kavitha Devi's statement was recorded by the Koyembed All Women Police Station on 11.09.2024, in which she has stated that she had interacted with the victim girl

in the presence of her mother on 01.09.2024 around evening hours and she had taken the photograph of victim and victim's mother posted in their official whatsapp group. However, the said Kavitha denied about the video taken in her cell phone.

21. Learned State Public Prosecutor said that the statement of the minor victim girl in Government Kilpauk Medical College Hospital was recorded during night hours at 11.30. P.M. However, the victim side states that the statement of recording continued till 01.00 A.M during night hours.

22. The facts as narrated before this Court raises several doubt and suspicion. The facts placed by the victim side and prosecution side are contradicting each other. Narration of facts on the victim side cannot be said to be “wholly unreliable”. Narration of facts by the prosecution side raises serious doubt in the mind of this Court. The procedures followed in registering the case and conducting investigation are in violation of the procedures as contemplated and established under the provisions of the POCSO Act. The victim minor girl was being harassed in the Government Kilpauk Medical College Hospital and the recording of her statement during mid-night hours is impermissible under law. The harassment caused to the minor victim girl also raises several doubts

regarding the mind set of the Inspector of Police in conducting investigation in an impartial manner. Allowing the accused to sit on the chair in the Police Station in front of the parents and beating the father of the victim girl and arresting the accused after the matter was being published in the public domain, more specially, after a lapse of 12 days, would be sufficient to form an opinion that the Police Authorities have not properly handled the case by following the due procedures contemplated under the Act and in the manner known to law.

23. The subsequent criminal cases registered against one Youtuber and one Journalist cannot be appreciated by this Court. The publications are made, on receipt of the videograph or information. Therefore, the police are expected to conduct a thorough enquiry and identify the persons, who all are the real accused disclosed the audio and video to the Journalist. Thus, merely registering a case against the Journalist would do no service to the cause of justice.

24. Practice of registering cases only against the Journalists and Youtubers leaving the real accused, is with an idea to cause threat to the Freedom of Press. Freedom of Press being a Constitutional Right, it cannot be compromised. Whenever such nature of publications are made, police are

expected to find out the real accused, who provided such videographs and information to the Journalist instead of registering criminal cases only against the Journalist.

### **IX. CONCLUSION:**

25. We could form an opinion that the procedures followed by the respondent / Police and treating the minor victim girl and her parents in the Police Station and Hospital are directly in violation of the provisions of the POCSO Act and the procedures established to conduct investigations. The actions of the respondent / Police raises serious doubts and suspicion in the mind of this Court. The victim side absolutely lost their confidence on Police regarding the investigation conducted.

26. Considering the principle “Justice must be seen to be done” and the victim side lost their confidence on the Police, on account of the ill-treatment caused to them and violations of the procedures contemplated under POCSO Act, this Court found enough reasons to consider the case of the minor victim girl. Thus, we have no option, but to transfer the present investigation from the Tamil Nadu State Police to Central Bureau of Investigation (CBI) with

the following orders;

- (1) For the reasons stated in the aforementioned paragraph, we have arrived at an irresistible conclusion that the entire case in FIR.No.33 dated 30.08.2024 on the file of the W7 All Women Police Station, Anna Nagar, Chennai – 40 is directed to be transferred to the file of the Joint Director of Central Bureau of Investigation (CBI), Rajiji Bhavan, Besant Nagar, Chennai – 600 090 for conducting investigation and to continue all appropriate further actions in the manner known to law.
  
- (2) The respondents 1 and 2 are directed to hand over the entire documents relating to FIR.No.33 dated 30.08.2024 on the file of W7 All Women Police Station, Anna Nagar, Chennai – 600 040 to the Joint Director of Central Bureau of Investigation (CBI), Rajiji Bhavan, Besant Nagar, Chennai – 600 090.
  
- (3) The respondents 1 and 2 in H.C.P.No.2408 of 2024 are directed to provide necessary police protection to the victim girl and her family, enabling them to lead peaceful and safe life.



(4) The petitioner / victim side is at liberty to approach the Competent Court of Law for awarding of suitable compensation and for any other relief for which they are legally entitled.

(5) Registry is directed to communicate the order to the Joint Director of Central Bureau of Investigation (CBI), Rajiji Bhavan, Besant Nagar, Chennai – 600 090.

27. With the abovesaid directions, both the Habeas Corpus Petitions stand disposed of.

[S.M.S., J.]

[V.S.G., J.]

**01.10.2024**

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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To

- 1.The Deputy Commissioner of Police,  
Anna Nagar Range,  
Chennai – 600 040.
  
- 2.The Inspector of Police,  
All Women Police Station,  
Anna Nagar,  
Chennai – 600 040.
  
- 3.The Joint Director,  
Central Bureau of Investigation,  
Rajaji Bhavan, Besant Nagar,  
Chennai.
  
- 4.The Joint Secretary to Government  
Public (Law and Order),  
Fort ST.George, Chennai – 9.
  
- 5.The Public Prosecutor,  
Madras High Court.

*HCP.Nos.2408 & 2334 of 2024*

**S.M.SUBRAMANIAM, J.**  
**AND**  
**V.SIVAGNANAM, J.**

*gd*

**H.C.P.Nos.2408 & 2334 of 2024**

**01.10.2024**