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*Crl.M.P.No.1368 of 2024
in Crl.A.No.124 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.02.2024

CORAM:

THE HON'BLE Mr.JUSTICE **M.NIRMAL KUMAR**

Crl.M.P.No.1368 of 2024

in

Crl.A.No.124 of 2024

Dinesh

... Petitioner

Vs.

State rep by
The Inspector of Police,
All Women Police Station,
Ammamet, Salem City.

... Respondent

PRAYER: Criminal Miscellaneous Petitions filed under Sections 389(1) of Cr.P.C to suspend the sentence imposed upon the petitioner by the judgment passed in Spl.S.C.No.71 of 2022 dated 08.01.2024 on the file of the Learned Sessions Judge, Principal POCSO Court, Salem and to enlarge the petitioner on bail.

For Petitioner : Mr.V.Karthic
Senior Counsel
for Mr.Adithya Varadarajan
For Respondent : Mr.R.Kishore Kumar
Government Advocate (Crl. Side)



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence of imprisonment imposed on him in Spl.S.C.No.71 of 2022 by a judgment dated 08.01.2024 on the file of the learned Sessions Judge, Principal POCSO Court, Salem and to enlarge the petitioner on bail pending disposal of the above Appeal.

2. The petitioner/Accused in Spl. S.C.No.71 of 2022 was convicted by the trial Court for offence under Sections 341, 506(ii) IPC, Section 7 r/w 8 and 11(i) r/w 12 of POCSO Act and the petitioner was sentenced as follows:

<i>S.No.</i>	<i>Offences</i>	<i>Punishment</i>
1.	Section 341 IPC	to pay a fine of Rs.500/- for offence under Section 341 IPC in default of payment of fine, to undergo one month Rigorous Imprisonment,
2.	Section 506(ii) IPC	to pay a fine of Rs.3000/- for offence under Section 506(ii) IPC in default of payment of fine, to undergo one month Rigorous Imprisonment,
3.	Section 7 r/w 8 of POCSO Act	to undergo 5 years Rigorous Imprisonment and fine of Rs.1000/- in default of payment of fine, to undergo additional Rigorous Imprisonment for one year
4.	Section 11(i) r/w 12 of POCSO	To undergo 3 years Rigorous



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S.No.	Offences	Punishment
	Act	Imprisonment and fine of Rs.1000/- in default of payment of fine, to undergo 6 months Rigorous Imprisonment

Aggrieved against the same, the present appeal has been filed by the petitioner/accused. The present miscellaneous petition seeking suspension of sentence and bail is filed by the accused.

3. During trial, on the side of the prosecution, PW1 to PW10 examined and marked Exs.P1 to P14 and 3 Material objects. On the side of the defence, no witnesses examined and one document was marked as Ex.D1. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, had convicted the petitioner as stated above.

4.The contention of the learned Senior counsel appearing on behalf of the petitioner is that on 14.10.2021 at about 10.00.a.m the victim in her two wheeler to purchase eggs went to a shop. At that time, the petitioner followed her in his bike, restrained her and prevented her from moving further in order to commit sexual assault, touched her body and threatened her that if she discloses the same, she would be done away, for which, a complaint is given. On completion of investigation, charge sheet filed. The



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case was taken on file. The petitioner is said to have been identified based on the CCTV recordings found in the scene of occurrence, which was collected from PW10 and the same have been marked as MO1. PW10 in his evidence stated that as per the CCTV recordings, the petitioner and the victim were found having heated arguments and the petitioner is said to have pulled the victim hand. In such circumstances, the Trial Court coming to the conclusion that the petitioner molested the victim is contrary to the evidence of PW10 and MO1. Since the victim is from a Advocate's family, the respondent police, on compulsion foisted a false case, further victim is aged about 16 years, without license she had driven the vehicle occupying middle of the road, blocking the way, which was questioned by the petitioner and had heated arguments, for which, the petitioner falsely implicated in this case. PW3 is the friend of PW1, who states about the arrest and confession of the accused. Admittedly, MO1 has been collected from PW10 much latter, but PW3 states that he saw the petitioner inside the police station on the day of occurrence itself. The specific case of the prosecution is that the petitioner was found with a full mask helmet and no identification parade done in this case. The Trial Court accepting production of MO1 at a belated



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stage without reasons, not proper. After examination of PW9-Investigating Officer and when the case was posted for arguments, finding the lapses in the case to fill up the lacunae. Later, the prosecution examined PW10 and produced MO1. PW10 admits that there are 10 cameras in the locality and from which camera, under what angle pictures captured, who is the Technician, who downloaded the recordings, no details given. PW10 not downloaded the recording. Hence, MO1 cannot be considered in Evidence. Hence, he prays for granting suspension of sentence to the petitioner.

5. The learned Government Advocate (Crl. Side) on the other hand filed his counter and submitted that the defacto complainant Sibi, S/o. Pazha Natarajan is residing at Salem and he is elder brother of the victim. On 14.10.2021 when the victim was in the Defacto Complainant's house, the victim's uncle Pazha Natarajan asked her to get eggs from the nearby shop, the victim took the Aactiva Motorcycle bearing registration No.TN 30 BB 9912 and went to the nearby shop to purchase egg. At that time, the accused who came in his motorcycle TN 30 BL 4908 followed the victim and trailed her. On seeing the same when the victim tried to turn towards right near the Kaliyamman temple at Kannanur, the accused blocked her by stopping his



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motorcycle on her way, prevented her from moving further and with the sexual intent in order to commit sexual assault over the minor victim girl uttering "I Want Your Body" and suddenly placed his hand over her right side breast and pressed. Hence the complaint.

5.1. It is submitted that based on the above complaint, a case was registered in All Women Police Station, Ammapet, Salem City in Crime No.29 of 2021, U/s. 11 (1) r/w.12 of POCSO Act 2012 on 15.05.2021 at about 14.00 hours, by Tmt.S.Mohammab, the then Sub Inspector of Police and submitted before Tmt. Sivakami, the then Inspector of Police for investigation.

5.2. It is submitted that during the course of investigation, the then Inspector of Police visited to the scene of occurrence, drew rough sketch and prepared observation mahazar in presence of witnesses and examined other witnesses in the scene and recorded their statements.

5.3. It is submitted that during the course of investigation, on 15.05.2021 at about 16.00 hours near Mulluvadi Gate, Salem the then Inspector of Police arrested the accused and recorded his confession statement and produced him before the Learned Special Court for POCSO



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Act, Salem and remanded into Judicial custody.

5.4 It is submitted that based on the witnesses statement, the then Inspector of Police altered the offences under section from U/s.11 (1) r/w. 12 of POCSO Act 2012 @ to U/s. 341, 506 (ii) IPC sec.7, r/w.8 and 11 (i), r/w. 12 of POCSO Act and on completion of investigation, filed charge sheet before the Learned Special Court for POCSO Act, Salem and the same was taken on file and assigned [Spl.S.C.No. 71 of 2022](#), dated 11.03.2022.

5.5. It is submitted that the trial court framed charges against the accused. During trial, the prosecution has examined 10 witnesses and marked 14 exhibits and 3 material objects were marked. On defence side no witness, one exhibits and no material object were marked.

5.6. PROSECUTION SIDE WITNESSES :-

P.W.1	Tr.Sibi/Defacto complainant	Deposed the incident happened to his daughter and he lodged a complaint before the respondent police [Ex.P.1]
P.W.2	Victim	Deposed the incident happened to her and she conveyed the same to her parents
P.W.3	Prasanth / confession and seizure mahazar witnesses	Deposed that he attested in the confession and seizure mahazar witness [Ex.P.3 and Ex.P.4]
P.W.4	Tr. Ganapathy Subramaniam / Observation Mahazar	Deposed that he attested in the observation Mahazar [Ex.P.5]



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	Witness	
P.W.5	Dr.Gokularamanan	Deposed that as per the requisition of investigation officer she conducted medical examination on accused and issued a Potency certificate [Ex.P.6]
P.W.6	Tr.Srivarthan /Neighbor of complainant	Deposed the incident happened to victim
P.W.7	Tr.Sherli Sebastian/ Head Master	Deposed that as per the requisition of investigation officer he issued school certificate for victim [Ex.P.7]
P.W.8	Tmt.Mohanambal/ Sub Inspector of police	Deposed that she received the complaint and register a case in Cr.No.29 of 2021[Ex.P.9]
P.W.9	Tmt.Sivakami/ Inspector of Police	Deposed that she took up the case for investigation and went to the scene of occurrence and drew rough sketch and prepared observation mahazar in the presence of witnesses and examined the witnesses and recorded their statements and arrested the accused and recorded his confession statement and remanded him into Judicial custody. Based on the witnesses statement, altered the offences section under and complete the investigation and filed a charge sheet before the competent court in accordance with law.
P.W.10	Angith Ranga / Friend of P.W.1	Deposed that as per the instruction of P.W.1 of investigation officer, he took the CCTV footage and issued the same as CD [Ex P.14).

5.7. It is submitted that during 313(1)(b) Gr. PC. questioning about the



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incriminating the evidences adduced by the prosecution witnesses, the accused denied the entire case as false.

5.8. It is submitted that after conclusion of due trial, the trial court by its judgment in [Spl.S.C.No. 71 of 2022](#) dated 08.01.2024 on the file of Learned Special Court for POCSO Act, Salem convicted the Petitioner/Appellant / Sole Accused and sentenced him as follows:-

U/s.341 IPC	Sentenced him to pay a fine of Rs.500/- ild to undergo one month R.I
u/s.506 (ii) IPC	Sentenced him to pay a fine of Rs.3000/- ild to undergo one year R.I
u/s.7, r/w.8 of POCSO Act 2012	Sentenced him to undergo 5 years Rigorous Imprisonment with fine Rs. 1000/-i/d to undergo 1 year R.I
Sec. 11(i), r/w.12 of POCSO Act 2012	Sentenced him to undergo 3 years Rigorous Imprisonment with fine Rs. 1000/-i/d to undergo 6 months R.I

Hence, prays for dismissal of the petition.

6. In this case, there were 4 cameras facing the road. The fact that the entire case revolves around MO1-CD produced by PW10, who downloaded



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the recordings and converted to CD, no details available, no Technician examined. The evidence of PW10 is that from MO1, it is seen that the petitioner and victim were found arguing and the petitioner holding the hands of the victim, the victim minor without licence driving the two wheeler, blocking the petitioner vehicle, explanation probable. Further, the rider of the vehicle found wearing Full Mask helmet, MO1 collected from PW10 latter, but earlier to it, PW3 admits that the accused was found in the police station, detained by police. In view of the above, the evidence and finding of the Trial Court to be reconsidered and evidence reappraisal, this Court is inclined to suspend the sentence imposed on the petitioner.

7. Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal Appeal:

(a) The petitioner/accused is ordered to be enlarged on bail, on condition that she shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each, with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Principal POCSO Court, Salem.

(b) The petitioner/accused and the sureties



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shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Judge may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioner shall appear before the Trial Court once in three months at 10.30 a.m. on the first working day of the month, until the disposal of the revision and if she is not able to appear before the Trial Court on that day, she shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the Trial Court on any other day in lieu of the date of her absence as directed by the Trial Court.

8. Accordingly, this Criminal Miscellaneous Petition is ordered.

29.02.2024

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To

- 1.The Inspector of Police,
All Women Police Station,
Ammamet, Salem City.
- 2.The Sessions Judge
Principal POCSO Court, Salem.
3. The Superintendent,



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Central Prison,
Coimbatore.
4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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