



WEB COPY



*Crl.M.P.No.17853 of 2023
in Crl.A.No.1275 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2024

CORAM:

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

Crl.M.P.No.17853 of 2023
in
Crl.A.No.1275 of 2023

Babu
S/o.Durai

... Petitioner/Accused

Vs.

The State rep by
Inspector of Police,
All Women Police Station,
Tambaram.
(Crime No.6 of 2019)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) of Cr.P.C to suspend the sentence of imprisonment imposed in the judgment dated 15.09.2023 in Spl.S.C.New No.187 of 2019 and Spl.S.C.Old No.45 of 2019, and enlarge the petitioner on bail on the file of the Sessions Judge, Special Court (POCSO Act), Chengalpattu, pending disposal of the above Criminal Appeal.

For Petitioner : Mr.A.Antony Robson

For Respondent : Mr.R.Kishore Kumar
Government Advocate (Crl. Side)



*Crl.M.P.No.17853 of 2023
in Crl.A.No.1275 of 2023*

WEB COPY

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence of imprisonment imposed on him in New Spl.S.C.No.187 of 2019 and Old Spl.S.C.No.45 of 2019 by a judgment dated 15.09.2023 passed by the learned Sessions Judge, Special Court for Protection of Children from Sexual Offences Act (POCSO Act), Chengalpattu and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused in New Spl.S.C.No.187 of 2019 was convicted by the trial Court by judgment dated 15.09.2023 for offence under Sections 9(l)(m)(p) r/w 10 of POCSO Act, 2012 and 506(i) of IPC and sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.3,000/- for offence under Sections 9(l)(m)(p) r/w 10 of POCSO Act, two years rigorous imprisonment. The sentences are directed to run concurrently, against which, the petitioner preferred a appeal in Crl.A.No.1275 of 2023 before this Court along with suspension of sentence petition.

3.During trial, on the side of the prosecution, PW1 to PW12 examined



*Crl.M.P.No.17853 of 2023
in Crl.A.No.1275 of 2023*

and marked Exs.P1 to P13. On the side of the defence, DW1 and DW2 examined and no documents marked. 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 counsel for petitioner is that PW1 is Aunt of PW2. PW2 is a minor girl, who said to have been sexually assaulted by the petitioner. A complaint has been given as though the petitioner committed penetrative sexual assault, it was found that only sexual assault committed. There has been material contradictions in the evidence of victim/PW2 with regard to the place, date and timing of the occurrence. In the earlier 164 Cr.P.C. statement, the victim states that the petitioner hugged her with sexual intent in the backyard of the school. Further he also kissed her and touched her private parts and promised to give Rs.100/-, which he failed to give and she is very categorical that apart from that the petitioner not committed any other act. But in the complaint given by PW1, the exaggerated version has been given as though the petitioner sent his two children to shop and thereafter taken the victim girl inside his house, hugged her, kissed her and touched her private parts and threatened her. This happened on



*Crl.M.P.No.17853 of 2023
in Crl.A.No.1275 of 2023*

12.03.2019 inside the house of the petitioner. PW2 in her evidence deposed that occurrence had taken place inside the house of the petitioner on 12.03.2019. PW1's evidence is contradiction to the evidence of PW2. Further it is the case that the petitioner is a neighbour residing in the opposite house of PW1 and there was frequent quarrel with regard to collecting of potable water from the common tap between the petitioner's wife and PW1. The trial Court not considered these aspects and merely gone with the evidence of PW2, which is highly doubtful. Further submitted that the petitioner has arguable points and fair chance of success in this appeal. 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 case of the prosecution is that the petitioner/appellant is the neighbour of PW1 and lives in an individual thatched roof house along with his 2 minor children and wife. Petitioner used to drop his 2 children and PW2 in school. On 12.03.2019 around 09.00 p.m., PW2 went to the house of PW1 with tears rolling down, on enquiry, she informed that the petitioner took her to his house kissed on her lips, hugged her and touched her private parts, threatened her not to disclose this to any



*Crl.M.P.No.17853 of 2023
in Crl.A.No.1275 of 2023*

WEB COPY

one. Hence, the case. During the course of investigation, it was also unearthed that the petitioner/appellant sexually assaulted PW2 at the backyard of the school in the month of February 2018.

5.1.Further submitted that based on the complaint, a case was registered in W-1, All Women Police Station, Tambaram in Crime No. 6/2019 under Section 6 of POCSO Act by the then Inspector of Police Tmt.A.Nandhini on 13.03.2019 and took up the investigation of the case. Further submitted that during the course of investigation, the then Inspector of Police went to the place of occurrence and prepared rough sketch and observation mahazar in the presence of witnesses on 13.03.2019 and also examined witnesses and recorded their statements. During the course of investigation, the then Inspector of Police arrested the petitioner on 13.03.2019 at about 05.00 hrs and produced him before the Hon'ble Court of Mahila Court, Chengalpattu on 13.03.2019 and sent for remand.

5.2.Further submitted that on 23.03.2019, the then Inspector of Police produced the victim girl before the Judicial Magistrate, Tambaram to record her statement under Section 164(5) Cr.PC. Further, the accused as well as the victim girl was sent for medical examination on 13.03.2019. After completion of elaborate and detailed investigation, on 07.08.2019, the then Investigation



*Crl.M.P.No.17853 of 2023
in Crl.A.No.1275 of 2023*

Officer/Inspector of Police Tmt. Sumathi had filed charge sheet against the accused before the learned Hon'ble Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Chengalpattu under Sections 366, 506(1) IPC and Sections 9(1)(m) (p) r/w. 10 of POCSO Act 2012 and the same was taken on file vide Old Spl. SC No. 45/2019 for trial.

5.3.The prosecution examined 12 witnesses as PW1 to PW12 and marked exhibits Ex.P1 to Ex.P13. No material objects marked. On the side of defence, DW1 and DW2 examined and no exhibits marked. Based on the evidence of the prosecution witnesses, the Trial court has rightly convicted the accused. The trial court convicted the accused only after scrutinizing the evidence of the prosecution witnesses and supporting documents. The prosecution has proved each and every circumstances pointing to the guilt of the accused and the prosecution have proved the case beyond all reasonable doubts. Hence, prays for dismissal of the petition.

6.Considering the submissions made and on perusal of the material available on record, it is seen that PW2's evidence materially contradicts with regard to the place of occurrence. In the earlier 164 Cr.P.C. statement she



*Crl.M.P.No.17853 of 2023
in Crl.A.No.1275 of 2023*

does not give date, place and particulars and states that petitioner hugged her, kissed her with sexual intent and also touched her private parts, but the evidence of PW1 and PW2 before the trial Court is in total variance. Further DW1, wife of the accused and DW2, daughter of accused in their evidence state that on 12.03.2019 the petitioner was not present in the house during the relevant time and further they had also state about the fight between PW1 and DW1. These factors have not been considered by the trial Court. In view of the same, this Court finds that the finding of the Courts below needs to be reconsidered.

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 he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only), with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for Protection of Children from Sexual Offences Act (POCSO Act), Chengalpattu.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb



*Crl.M.P.No.17853 of 2023
in Crl.A.No.1275 of 2023*

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 appeal and if he is not able to appear before the Trial Court on that day, he 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 his absence as directed by the Trial Court.

8. Accordingly, this Criminal Miscellaneous Petition is ordered.

01.03.2024

rsi



*Crl.M.P.No.17853 of 2023
in Crl.A.No.1275 of 2023*

To
WEB COPY

1. Inspector of Police,
All Women Police Station,
Tambaram.
2. The Sessions Judge,
Special Court for Protection of Children from
Sexual Offences Act (POCSO Act),
Chengalpattu.
3. The Superintendent,
Central Prison Puzhal-I,
Chennai.
4. The Public Prosecutor,
High Court, Madras.



WEB COPY



*Crl.M.P.No.17853 of 2023
in Crl.A.No.1275 of 2023*

M. NIRMAL KUMAR, J.

rsi

**Crl.M.P.No.17853 of 2023
in Crl.A.No.1275 of 2023**

01.03.2024