

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2021

CORAM

THE HONOURABLE MR. JUSTICE **P.N.PRAKASH**
AND
THE HONOURABLE MR. JUSTICE **R.PONGIAPPAN**

Crl.M.P.No.3911 of 2021

in

Crl.A.No.140 of 2021

Sridevi

.. Petitioner/A2

Vs.

State through its
Inspector of Police,
AWPS, Perur,
Coimbatore City.
(Crime No.16 of 2018)

.. Respondent/Respondent

Criminal Miscellaneous Petition filed under Section 389 (1) Cr.P.C.
Read with Section 439 Cr.P.C., to suspend the sentence imposed on the
petitioner by judgment and order dated 23.11.2020 passed in S.C.No.34 of
2019 on the file of the learned Sessions Judge, Special Court for Exclusive
Trial of Cases under POCSO Act, Coimbatore and to enlarge the petitioner
on bail pending disposal of the appeal.

For Petitioner : Mrs.S.Sumathy

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

ORDER

(Order of the Court was made by R.PONGIAPPAN, J.)

This criminal miscellaneous petition has been preferred by Accused No.2, seeking to suspend the sentence imposed on her, by judgment and order dated 23.11.2020 passed in S.C.No.34 of 2019 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under the POCSO Act, Coimbatore and to enlarge her on bail pending disposal of the appeal.

2. The case of the prosecution is that the petitioner herein, is the mother of the victim girl. The 1st Accused viz., Subramaniam, is the paramour of the petitioner. On 20.06.2017, at about 3.00 hrs, when the petitioner was in her house along with the victim girl at R11, A104 at Garden City Developers Apartment, Nagarajapuram, Vedapatti, Coimbatore, Accused No.1, knocked the door and on hearing the knocking sound, the petitioner herein opened the door and thereafter, went to sleep. By using the said situation, Accused No.1 in this case, closed the mouth of the victim girl, removed her dresses and pressed her chest and penetrated her vagina by his fingers and insisted her to come to bed and in case of failure, he threatened her that he would kidnap her and throw acid on her face. After three days, he

did the same sexual assault on the victim girl. Till August 2017, the victim girl was sexually assaulted by Accused No.1, for so many times.

3. For the said offence, initially, a case has been registered against Accused No.1 alone in Crime No.16 of 2018 under Sections 5(1) and 6 of the POCSO Act, 2012 r/w Section 506 (i) of IPC. Thereafter, during investigation, the investigation officer, came to the conclusion that the petitioner is also involved in the said offence and after conclusion of investigation, filed charge sheet against this petitioner under Sections 17 and 21(1) of the POCSO Act, 2012.

4. Ultimately, the trial was concluded and the petitioner/Accused No.2, was convicted under Section 17 of the POCSO Act, 2012 and sentenced to undergo imprisonment for life and to pay a sum of Rs.5,000/- as fine, in default to undergo one year rigorous imprisonment. Further, she is also found guilty of the offence under Section 21(1) of the POCSO Act, 2012 and sentenced to undergo six months rigorous imprisonment and to pay a sum of Rs.1,000/- as fine, in default to undergo one month rigorous imprisonment.

5. Challenging the above conviction and sentence, the petitioner/Accused No.2, has filed Crl.A.No.140 of 2021 along with the instant miscellaneous petition seeking suspension of sentence and bail.

6. Heard Mrs.S.Sumathy, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Government Advocate (Crl.Side) appearing for the respondent/State.

7. Mrs.S.Sumathy, learned counsel for the petitioner/Accused No.2 would contend that there was an enormous delay in lodging the complaint before the police officials. She would further contend that the petitioner is a chronic epilepsy patient, who is suffering without proper medicine in prison. Further being the mother, it cannot be said that the petitioner has also committed the offence, as alleged by the prosecution.

8. Per contra, Mr.R.Muniyapparaj, learned Government Advocate (Crl.Side), appearing on behalf of the respondent would submit that the witnesses examined on the side of the prosecution had clearly proved the case of the prosecution, beyond reasonable doubt.

9. The submissions made by the learned counsel appearing on either side are considered. It is true that the complaint pertaining to the case has been lodged with considerable delay and hence, a detailed appraisal is necessary in this regard. Further, it is also highly doubtful that the petitioner, being the mother, had involved in this offence, as alleged by the prosecution. Hence, the same also requires detailed appraisal. Moreover, the petitioner has been under incarceration from 23.11.2020 onwards. Further, the sentence imposed upon the prime accused/Accused No.1, had already been suspended by this Court vide order dated 17.03.2021 in Crl.M.P.No.8253 of 2020 in Crl.No.516 of 2020 and also the present appeal is not likely to be taken up in the near future. In such a view of the matter, this Court is of the view that the petitioner/Accused No.2, is entitled to the relief of suspension of sentence and bail.

10. Accordingly, the relief of suspension of sentence and bail is granted to the petitioner on the following conditions:

- (a) Considering the COVID-19 pandemic and lockdown restrictions, initially, the petitioner shall execute her own bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only)

before the Superintendent of the Central Prison, Coimbatore, in which the petitioner is confined and on such execution of the bond, the petitioner shall be released from prison;

(b) After the lockdown restrictions are lifted and normalcy is restored, the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, failing which, the suspension of sentence and bail granted by this Court shall stand automatically dismissed. The bond shall be executed within a reasonable period of one month from the date the lockdown restrictions are lifted.

(c) If for any reason, the petitioner is not able to execute the bond within the specified time, the petitioner shall approach this Court and file a petition seeking extension of time for the same.

(d) While executing the bond, the sureties shall furnish proof of identity and the sureties shall affix their photographs and left thumb impression in the surety bond and the trial Court shall obtain a copy of their Aadhar card or Voter ID or Driving license or Bank pass Book to ensure their identity.

(e) After the execution of the bond before the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO

Act, Coimbatore, the petitioner shall appear before the respondent/police everyday at 10.30 a.m. for a period of four weeks and thereafter, the petitioner shall appear before the trial Court on the first working day of every month at 10.30a.m. until the disposal of the appeal and if she is not able to appear before the trial Court on any 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.

(P.N.P.,J.) (R.P.A.,J.)
15.06.2021

Note to office:

Issue order copy today.

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To

1. The Sessions Judge,
Special Court for Exclusive Trial of Cases
under POCSO Act,
Coimbatore.
2. The Superintendent of Prison,
Central Prison, Coimbatore.
3. The Inspector of Police,
AWPS, Perur,
Coimbatore City.
4. The Public Prosecutor,
Madras High Court, Chennai – 600 104.

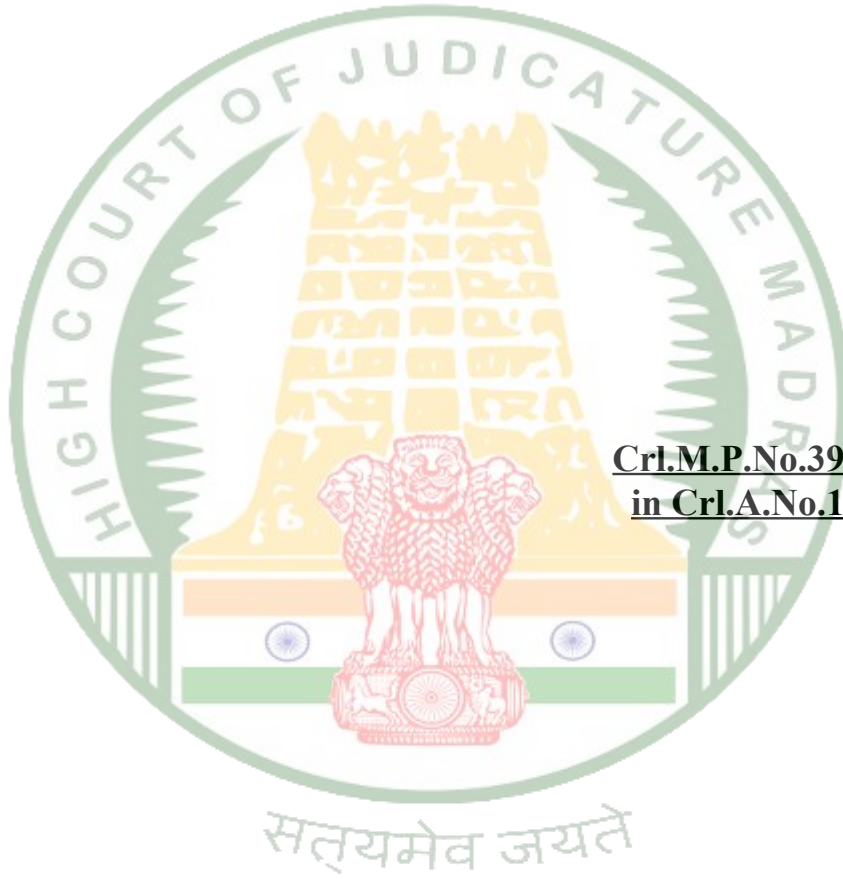
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