



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Twenty Fifth day of May Two Thousand Twenty Two

PRESENT

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.6721 of 2022

IN CRL A.517 of 2022

ANAND SAMUEL

[PETITIONER/APPELALNT/SINGLE ACCUSED]

Vs

STATE REP BY

[RESPONDENT/COMPLAINANT]

THE INSPECTOR OF POLICE,
MADIPAKKAM POLICE STATION,
CHENNAI
(CRIME NO.76/2014)

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.517/2022 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner by the Learned Sessions Judge Cum Speical Court for Exclusive Trial of Cases Under POCSO Act, Chengalpattu Made in New S.C.29/2019 and Old S.C.19/2017 dated 10.05.2022 and enlarge the petitioner on bail pending disposal of the above CRL A.517/2022.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.517/2022 on the file of the High Court and upon hearing the arguments of M/S T.R.RAVI, Advocate for the petitioner and of M/S.LEONARD ARUL JOSEPH SELVAM, Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence of imprisonment passed by the learned Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Chengalpattu, dated 10.05.2022 in S.C.No.29 of 2019 and Old S.C.No.9 of 2017. The conviction and sentence imposed by the trial Court are as follows:-



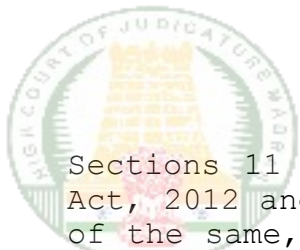
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Petitioner /Accused	Conviction	Sentence
Petitioner	Convicted for the offence under Section 8 of the Protection of Children from Sexual Offence Act, 2012.	To undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.5,000/-, in default to undergo Rigorous Imprisonment for six months.

2.The gist of the case is that on 22.01.2014, at about 06.45 p.m., the victim girl/PW2, aged about 13 years, had come back from school and parked her cycle in platform, which is her usual place, at that time, the petitioner followed her in his motor bike/MO1 bearing registration No.TN 02 AT 9879 and enquired the victim girl/PW2 about any tuition center available nearby. At that time, the petitioner unzipped his pant and placed his private part in his helmet/MO2, making it visible to the victim girl/PW2. Sensing fear, the victim girl/PW2 raised alarm and the people nearby rushed to the scene. Suddenly, the petitioner is said to have pulled the victim girl/PW2 beside and committed the sexual assault on her.

3.During trial, on the side of the prosecution, 10 witnesses examined as PW1 to PW10 and 10 documents marked as Exs.P1 to P10 and two Material Objects marked ad MO1 & MO2. On the side of the defence, no witness examined and no document marked.

4.The learned counsel for the petitioner submitted that the petitioner and the victim girl/PW2 are total strangers, the petitioner is residing at Pallavaram and the victim girl/PW2 is residing at Puzhithivakkam. Hence, there is no intention or reason for the petitioner to go near the victim girl/PW2. In this case, the alleged occurrence is said to have taken place on 22.01.2014 and the FIR in Crime No.76 of 2014/Ex.P5 was initially registered for offence under Section 4 of the Tamil Nadu Prohibition of Women Harassment Act, subsequently, it was altered into Sections 7 and 8 of the Protection of Children from Sexual Offence Act, 2012 on 27.01.2014 without any material or basis. He further submitted that the statement of the victim girl under Section 161 Cr.P.C., was recorded on 19.01.2016 i.e., after two years with enormous delay, hence, there is every possibility of giving exaggerated version. In this case, the alleged occurrence took place in the year 2014, but the charge sheet filed 2 ½ years later on 06.06.2017, hence, there is possibility of manipulation and improvement of the case at every stage. The framing of charges under Section 8 of the Protection of Children from Sexual Offence Act, 2012 is not maintainable. If taking the prosecution case as a whole, then it would attract only offence of harassment which may come under



Sections 11 and 12 of the Protection of Children from Sexual Offence Act, 2012 and the maximum punishment is only for three years. In view of the same, the above case is hit by Section 468 of Cr.P.C., as held by this Court in the case of "A.Raja @ Arokiya Raj Versus The State, rep by the Inspector of Police, AWPS Cantonment, Trichy reported in 2015(2) LW CrI. 84". The explanation given by the petitioner is that the petitioner parked his bike/MO1 in the platform, when the victim girl/PW2 had come there to park her cycle. At that time, there was a wordy quarrel. Since the victim girl used unparliamentary words against the petitioner, there was commotion. Since the petitioner being a stranger to the area, he was falsely projected as though he committed the sexual assault on the victim girl/PW2.

5.The learned counsel further submitted that the age of the victim girl is not proved in the manner known to law as could be seen from the bonafide certificate/Ex.P4 of the victim girl. PW8 is the Head Master of the school, where in the victim girl/PW2 studied. Through PW8, the bonafide certificate/Ex.P4 of the victim girl was marked and not Transfer Certificate or any age proof. The father and mother of the victim girl viz., PW1 and PW5 not stated anything about the age of the victim girl/PW2. As per the provisions of the POCSO Act, it is for the trial Court to conclude and confirm the age of the victim girl/PW2. In this case, from the evidence of PW8 and from Ex.P4, it cannot be conclusively said that the age of the victim girl/PW2 has been proved in the manner known to law. This Court in the case of "Alamelu & others Versus State, represented by Inspector of Police reported in 2011(1) MWN CrI. 618 SC" held the manner in which the age of the victim girl to be proved. In this case, there have been lot of contradictions and improvement in the statement of the victim girl/PW2 and in her evidence, which the lower Court failed to consider. He further submitted that the petitioner has paid the fine amount imposed by the trial Court, hence, he prayed for suspension of sentence.

6.The learned Government Advocate (CrI. Side) appearing for the respondent Police submitted that the petitioner has committed serious offence on the victim girl/PW2, who clearly narrated the entire happenings in her evidence. PW1 and PW5 are the father and mother of the victim girl/PW2, who have corroborated the evidence of PW2. PW2 in the statement recorded under Section 164 Cr.P.C., and in her evidence before the trial Court have consistently stated about the happenings on 22.01.2014 when she was sexually assaulted by the petitioner. The petitioner displayed his private part and caused annoyance on her. Further, the petitioner made physical touch on the victim girl. He further submitted that the points raised by the petitioner have already raised during trial and the trial Court rejected the same. Hence he opposed for suspension of sentence of the petitioner.



7.Considering the facts and circumstances of the case and nature of the offence and also taking note of the fact that there are arguable points involved in this appeal and it would take some time for the appeal to be taken up, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.

8.Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner 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 exclusive trial of cases under POCSO Act, Chengalpattu.

9.Further, the petitioner is directed to appear before the trial Court on first working day of every English calender month at 10.30 a.m., until further orders.

-sd/-
25/05/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SESSIONS JUDGE CUM
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES
UNDER POCSO ACT, CHENGALPATTU.

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI, CHENNAI.

3 THE INSPECTOR OF POLICE,
MADIPAKKAM POLICE STATION,
CHENNAI.



4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

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+1 C.C. to M/S T.R.RAVI Advocate on payment of necessary charges
SR.NO. 7923

Order

in
CRL MP.6721/2022

in
CRL A.517/2022

Date :25/05/2022

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RW-26/05/2022