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Crl.M.P.No.7576 of 2022 in Crl.A.No.565 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.M.P.No.7576 of 2022 in Crl.A.No.565 of 2022

Shanmugam

... Petitioner

Versus

State by:

Inspector of Police,
All Women Police Station,
Thirukoilur, Villupuram District.
(Crime No.35 of 2018)

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure to suspend the sentence of imprisonment imposed on the petitioner in the judgment, dated 19.05.2022 in New Spl. S.C.No.232 of 2019 (Old Spl. S.C.No.24 of 2019) on the file of the learned Special Court for Exclusive Trial of Cases under POCSO Act, Villupuram and enlarge the petitioner on bail, pending disposal of the Criminal Appeal No.565 of 2022.

For Petitioner : Mr.K.R.Ramesh Kumar

For Respondent : Mr.S.Vinoth Kumar
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition is filed to suspend the sentence in the judgment, dated 19.05.2022 in New Spl. S.C.No.232 of 2019 (Old Spl.



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S.C.No.24 of 2019) on the file of the learned Special Court for Exclusive Trial of Cases under POCSO Act, Villupuram.

2. The learned Counsel for the petitioner, taking this Court to the Section 164 Cr.P.C., statement of the victim, the complaint, originally lodged in this case and the evidence of the victim before the Trial Court, would submit that in this case, the evidence on record is that after sending the child to the bunk shop for purchase of betel nuts, the petitioner/accused followed her and touched her and thrown her on the thorn bushes. Even at that time, the mother of the child was following her and an alarm was raised by her. Therefore, in this case, the learned Counsel would submit that there was absolutely no evidence as to touching the sex organs or private parts of the child and absolutely, there is no intention of sexual abuse has been proved and the accused had discharged his burden by duly cross-examining the victim child and the victim child has answered that the accused had never behaved in a bad manner with her. Therefore, he would submit that there is a prima facie case for grant of suspension of sentence in this case.

3. The learned Counsel for the petitioner would also submit that the petitioner is only an agricultural labour and therefore, he is not in a position to

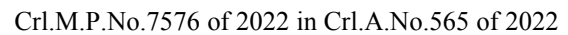


deposit the entire amount of Rs.1,25,000/-.

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4. Per contra, the learned Government Advocate (Crl. Side) would submit that once there is an injury on the body of the child, there was no occasion other than the sexual intention for him to have followed the child and therefore, he would submit that the Trial Court has rightly convicted the petitioner, in view of the presumption under Section 30 of the POCSO Act.

5. I have considered the rival submissions made on either side. Considering the evidence of the victim child and the answer of the investigating officer in the cross-examination that there was no injury on the body of the child and so the child was not sent to any medical examination, considering the answer of the child in the cross-examination that the accused had not misbehaved with her on any previous occasion and considering the fact that the petitioner is under incarceration from the date of judgment, 19.05.2022, I am of the view that this is a case for grant of suspension of sentence pending disposal of the appeal. Considering the nature of this case, along with the substantive sentence of imprisonment, the sentence of fine is also suspended, but, however, on a condition that the petitioner shall deposit a sum of Rs.25,000/- to the credit of New Spl. S.C.No.232 of 2019 (Old Spl. S.C.No.24



POCSO Act, Villupuram.

the following terms:-

sureties each for a like sum to the satisfaction of the Trial Court;

of their Aadhar Cards or Bank Pass books to ensure their identities;

date of his absence, as directed by the Trial Court.

Court for Exclusive Trial of Cases under POCSO Act, Villupuram.



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Index : yes/no

Speaking order/Non-speaking order
grs

To

1. The Special Court for Exclusive Trial of Cases
under POCSO Act, Villupuram.
2. The Public Prosecutor,
High Court of Madras.
3. The Inspector of Police,
All Women Police Station,
Thirukoilur, Villupuram District.
4. The Superintendent,
Central Prison,
Cuddalore.



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D.BHARATHA CHAKRAVARTHY. J.,

grs

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