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**Crl.M.P. No.10024 of 2022
in
Crl.A. No.340 of 2021**

**RESERVED ON : 16.09.2022
DELIVERED ON : .09.2022**

**P.N. PRAKASH, J.
and
RMT. TEEKAA RAMAN, J.**

ORDER

P.N. PRAKASH, J.

The sole accused in Special C.C. No.35 of 2019, who is the petitioner herein, has been convicted and sentenced *vide* judgment and order dated 30.03.2021 by the Special Court for Exclusive Trial of POCSO Act Cases, Coimbatore as under:

Provisions under which convicted	Sentence
Section 5(m) read with Section 6 of the POCSO Act, 2012	Life imprisonment and fine of Rs.55,000/-, in default to undergo one year rigorous imprisonment.
Section 506(I) IPC	Two years rigorous imprisonment and fine of Rs.1,000/- in default to undergo six months rigorous imprisonment.

Besides, the trial Court further recommended to the Government to pay a compensation of Rs.5 lakhs to the victim girl, “X” (P.W.2) as per G.O. (Ms.)



No.33, Social Welfare and Nutritious Meal Programme [SW.5(2)] Department dated 03.10.2020 from the Victim Compensation Scheme.

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2 Challenging the aforesaid judgment and order of the trial Court, the sole accused has filed Crl.A. No.340 of 2021 together with Crl.M.P. No.10024 of 2022 seeking suspension of sentence and bail.

3 Heard Mr. B.R. Shankaralingam, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent State.

4 The prosecution case has been captured in paragraph 1 of the trial Court judgment as under:

“The *de facto* complainant Banumathi, residing at 5/6, Kondeyampalayam, Thennamanallur, Coimbatore within the boundaries of All Women Police Station, Perur. The minor victim girl XXX aged 4 is the daughter of the de facto complainant. The accused is working as a Tailor near the victim girl’s house. On 06.03.2018 at 8.30 p.m., when the victim girl was playing at Ayya @ Pattappan house which is near her house, the accused Nanjappan inserted his fingers inside the victim girl’s birth organ and sexually assaulted the victim girl and thereby the accused has committed the offence u/s 5(m) r/w 6 of POCSO Act, 2012.”

5 The main contention of the learned counsel for the petitioner is that the incident in this case had taken place on 06.03.2018, but, the police complaint was given only on 16.03.2018, medical examination was done only on 19.03.2018 and the statement of “X” (P.W.2) was recorded only on 09.04.2018; thus, there is a



huge delay in all the stages, which has been ignored by the trial Court. He further contended that the petitioner had examined three witnesses, viz., D.Ws. 1 to 3 to show that there was a temple dispute between Ganeshamurthy (P.W.4) and the petitioner and on the instigation of Ganeshamurthy (P.W.4), the present prosecution has been engineered by Banumathy (P.W.1) who is the mother of “X” (P.W.2).

6 Coming to the first contention with regard to delay, “X” (P.W.2) was 4 ½ years at the time of the incident. The petitioner has a tailor shop near the house of “X” and so, he is known to “X” as a 'tailor'. “X” (P.W.2) had cried to her parents about the pain in her private part and when her parents started asking her more, she has stated that the petitioner (tailor) took her to Pattappan’s house and inserted his finger into her place of urination. This disclosure must have shocked her parents. “X” developed fever and was taken to a private hospital for treatment. When Banumathy (P.W.1) confronted the petitioner the next morning in the grocery shop, the latter threatened her of dire consequences. Thus, fearing reprisal by the petitioner, she would have thought to leave it at that. The parents of “X” had migrated from Cuddalore to Coimbatore District and had adopted “X” as they were issueless. The fact that “X” was abused became an open secret and this prompted the Child Helpline to intervene and take up the matter after due enquiry.



Thus, only on the intervention of the Child Helpline was this case brought to light and therefore, the delay in Banumathy (P.W.1) going to the police station to lodge a complaint and the consequential delay in the medical examination of “X” and recording of Section 164 Cr.P.C. statement cannot, by any stretch of imagination, be said to be fatal in the facts and circumstances of the present case.

7 As regards the evidence of D.W.1 to D.W.3, they were examined in order to show that the petitioner was not a tailor and was an agriculturist and the family of the petitioner were in good terms with the family of Ganeshamurthy (P.W.4). However, neither in the cross-examination of the parents of “X”, viz., Banumathy (P.W.1) and Sridhar (P.W.3) nor in the cross-examination of Ganeshamurthy (P.W.4), was it suggested that it was Ganeshamurthy (P.W.4), who had instigated Banumathy (P.W.1) to lodge a false complaint against the petitioner.

8 As regards the contention that the petitioner is not a tailor, even this suggestion has not been put to Banumathi (P.W.1) and Sridhar (P.W.3) and for the first time, through the defence witnesses, such a plea was raised. The trial Court has discussed the evidence of “X” (P.W.2), who has stated that the petitioner took her to Pattappan’s house nearby, removed her undergarment and inserted his finger into her private part. “X” had no personal animus against the petitioner and



she disclosed this to her parents only after she started developing pain in her private part. It may be pertinent to state here that even in the examination of the petitioner under Section 313 Cr.P.C., he has not explained anything at all and has merely denied the evidence of the prosecution witnesses. Superadded, it may be necessary to state here that “X” was examined in chief on 21.06.2019 and was not cross-examined on the same day and the trial Court’s finding at paragraph 10 of the impugned judgment is extracted hereunder:

“10. The victim girl in her chief examination. Tailor who is a neighbour told that he is giving Maruthani take her to Pattan Thaatha’s house make her lie down in the cot, removed her panties and inserted his finger in her genital area. She bite tailor’s finger and ran away. This evidence of the victim girl before the Judicial Magistrate and before this Court is corroborated with each other and there is no contradiction. The child is too tender to narrate and describe more. This action or offence is stated as comes under 7 r/w 8 of POCSO Act by the learned defence counsel.”

9 At this juncture, pertinent it is to point out that the Supreme Court, in **Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi) [(2008) 5 SCC 230]**, has held as follows:

“30. ... In the above cases, it has been observed that once a person has been convicted, normally, an appellate court will proceed on the basis that such person is guilty. It is no doubt true that even thereafter, it is open to the appellate court to suspend the sentence in a given case by recording reasons. But it is well settled, as observed in Vijay Kumar [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195 : JT 2002 Supp (1) SC 60] that in considering



the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should consider all the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted.”

(emphasis supplied)

In view of the above authoritative pronouncement of the Supreme Court, in the opinion of this Court, in a case of such a grave nature, it would not be appropriate to grant suspension of sentence and bail to the petitioner and accordingly, this petition stands dismissed. However, it is made clear that the aforesaid observations are confined to the limited extent of deciding the instant application for suspension of sentence and bail and shall not be a bar for the petitioner in urging the grounds raised in this application at the time of final hearing of the criminal appeal.

(P.N.P., J.) (TKR, J.)
27.09.2022

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To

- 1 The Special Judge for Exclusive Trial of POCSO Act Cases
Coimbatore
- 2 The Inspector of Police
All Women Police Station
Perur
Coimbatore District (Cr. No.09 of 2018)
- 3 The Public Prosecutor
High Court of Madras
Chennai 600 104



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P.N. PRAKASH, J.

and

RMT. TEEKAA RAMAN, J.

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Pre-delivery order in
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