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Crl.M.P.No.11569 of 2022
in Crl.A.No.840 of 2022

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RESERVED ON : 12.09.2022

PRONOUNCED ON : 27.09.2022

P.N.PRAKASH, J.

and

RMT.TEEKAA RAMAN, J.

ORDER

P.N.PRAKASH, J.

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment and order dated 26.09.2018 passed in S.C.No.77 of 2017 on the file of the Sessions Court, (Fast Track Mahila Court), Namakkal and to enlarge the petitioner on bail, pending disposal of the above appeal.

2. The petitioner faced a prosecution in S.C.No.77 of 2017 before the Sessions Court, (Fast Track Mahila Court), Namakkal, in which, he was convicted and sentenced as under on 26.09.2018:



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<i>Provision under which convicted</i>	<i>Sentence</i>
Section 5(m) r/w 6 of the POCSO Act	Life imprisonment and fine of Rs.1,000/-, in default to undergo four months rigorous imprisonment.

3. Challenging the aforesaid conviction and sentence, the petitioner has filed Crl.A.No.840 of 2022 with a delay of 610 days, which, this Court *vide* order dated 21.07.2022 in Crl.M.P.No.10120 of 2022 in Crl.A.No.SR32116 of 2022, condoned the same.

4. Heard Mr.R.Sankara Subbu, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

5. The case of the prosecution has been captured in paragraph no.1 of the trial Court judgment, which reads as under:

“The de facto complainant Jayanthi residing at Ambethkumar Nagar, Erumapatti belongs to Arundhadhiyar SC community and the victim is her daughter. The accused belongs to Asari community residing in the same street. The victim was aged about five years old at the time of



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occurrence. That on 25.05.2016 at about 2.00 p.m. when the victim was playing in front of her house, the accused took her to the nearby pig shed and removed her dress and then the accused brushed his male organ upon the female organ of the victim on several times till the female organ of the victim became reddish and thereby committed offences punishable u/s 5 r/w 6 of POCSO Act and section 3(1)(w)(i) of SC/ST (POA) Amended Act 2015 according to D.S.P. Namakkal Sub Division.”

6. It appears that the victim (PW2) is a dalit girl, who was studying in I standard in a local Government School, and the appellant is caste Hindu. When the victim (PW2) was given bath by her mother Jayanthi (PW1), she complained of pain in her private parts and when her mother asked the victim (PW2), she disclosed her what are all done by the petitioner herein.

7. In her evidence, the victim girl (PW2) has stated that while she was playing along with her friends, the petitioner took her to a nearly pig shed and removed her under garment and pushed his male organ on her private parts.



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8. Thus, from a reading of the judgment of the trial Court, we find no serious infirmity in the prosecution case for suspending the sentence and granting bail to the petitioner.

9. The learned counsel for the petitioner laid strong reliance on the recent judgment of the Supreme Court in *Satender Kumar Antil Vs. Central Bureau of Investigation and Others*¹ and submitted that the petitioner has been in incarceration for more than four years and therefore, he would be entitled to be released on bail as a matter of routine.

10. We carefully perused the said judgment and it relates essentially to the release of under trial prisoners on bail. In this case, the petitioner was convicted and sentenced by the trial Court on 26.09.2018 and he filed this appeal before this Court only on 13.07.2022. This Court is taking up the appeals of the convicted prisoners in prison and disposing of them expeditiously.

11. At this juncture, pertinent it is to point out that the Supreme

¹ (2021) 10 SCC 773



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Court, in **Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi)**¹,

has considered **Kashmira Singh v. State of Punjab**² and 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.”

1 (2008) 5 SCC 230

2 1977 SCC (Cri) 559



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In view of the above reasoning and taking into consideration the serious nature of allegations against the petitioner, we are of the opinion that this is not a fit case to grant suspension of sentence and bail to the petitioner and accordingly, this criminal miscellaneous petition stands dismissed.

(P.N.P.,J.) (T.K.R.,J.)
27.09.2022

nsd



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To

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- 1.The Sessions Judge,
(Fast Track Mahila Court),
Namakkal.
- 2.The Deputy Superintendent of Police,
Namakkal Sub-Division,
Erumapatti Police Station.
- 3.The Superintendent of Prison,
Central Prison, Salem.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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