



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2022

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.M.P.No.11835 of 2021

in

Crl.A.No.562 of 2021

G.Ganesan

... Petitioner

Vs.

The State rep by Inspector of Police,
W-15, All Women Police Station,
Royapuram, Chennai
(Cr.No.02 of 2020)

... Respondent

PRAYER: The Criminal Miscellaneous Petition is filed under Section 489(1) of the Code of Criminal Procedure, to suspend the sentence of conviction and imprisonment dated 23.09.2021 imposed by Special Court for Exclusive Trial of cases under POSCO Act, Chennai in Spl.SC.No.65 of 2020 and enlarge the petitioner on bail pending disposal of the above criminal appeal.

For Petitioner : Mr.S.Conscious Ilango

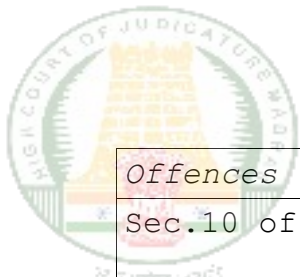
For Respondent : Mr.S.Sugendran
Government Advocate (Crl.Side)

ORDER

(This case has been taken up through video conference)

This Criminal Miscellaneous petition has been filed by the petitioner seeking suspension of sentence of imprisonment imposed by the Special Court for Exclusive Trial of Cases under POSCO Act, Chennai in Spl.SC.No.65 of 2020 dated 23.09.2021.

2. In any by the judgment of the Trial Court, the petitioner/accused was convicted and sentenced for the following offences :-



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Offences	Conviction and Sentence
Sec.10 of POSCO Act	Sentenced to undergo 5 years imprisonment and to pay a fine of Rs.5,000/- i/d. one month S.I.

against which the present appeal has been filed.

3. The case of the prosecution is that on 04.06.2020 at 17.00hours the defacto complainant/Tmt.Anithavani lodged a complaint before the respondent/police stating that she is residing at No.85, Porchikal Church Street, Sevenwells Broadway, Chennai-109. She was married to one Jayachandar during 2010 and due to the continuous dispute between them, she was living separately and she had applied for divorce. She had further stated that she was having one daughter/xxxx/victim aged about 9 years (DOB-11.01.2011). One day she and the victim were watching the movie "Ponmagal" having story relating to child abuse. At that time, the victim had asked her some clarification. The complainant had already spoken to the victim about the good touch and bad touch and at that time, the victim asked her that if she states something to her whether she would beat her. When enquired the victim, had informed her that when she had gone to her father's house, the accused/Ganesan who is the maternal uncle of her father had touched her private parts. Hence, the complaint.

4. Based on the complaint a case was registered by the respondent/police in Cr.No.2 of 2020 under Section 9 r/w.10 of POCSO Act on 04.06.2020 at 17.00hrs. During the course of investigation, the Inspector of Police examined the witnesses and recorded their statement on the same day at about 19.30hrs. The accused was arrested and produced before the Special Court for Exclusive Trial of cases under POCSO Act, Chennai and remanded to judicial custody. A statement under Section 164 Cr.PC was recorded from the victim on 06.07.2020, after completion of elaborate and detailed investigation, the respondent filed charge sheet against the accused before the Special Court for Exclusive Trial of cases under POCSO Act, Chennai in SC.No.65 of 2020.

5. The trial Court framed charges against the accused for the offence under Section 10 r/w.9(n) of POCSO Act, 2012 and to prove the charges against the accused, the prosecution examined PW1 to PW7 and marked Exs.P1 to P7. On the side of the defence, no witnesses were examined, however, 16 documents were marked as Exs.D1 to D16 and no material objects were marked on both sides. When the accused was questioned under Section 313 he had denied the charges.

6. The trial Court came to the conclusion that the prosecution has proved the charges and found the petitioner guilty for the charges and convicted and sentenced him as stated above.



7. The learned counsel for the petitioner would submit that the petitioner is the maternal uncle of erstwhile husband of PW1 (mother of the victim). The complaint has been given by PW1 only due to personal animosity against the petitioner and her erstwhile husband to wreck vengeance. Since he had supported her erstwhile husband in the matrimonial dispute. The petitioner's nephew Jayachandar father of the victim was married to PW1 during the year 2010 and the victim was born out of the wedlock. Subsequently, PW1 had developed illicit intimacy with one Fiazuddin who was their neighbour, due to which there was matrimonial discord between PW1 and the said Jayachandar. Due to the intervention of elders, PW1 agreed to give divorce by mutual consent and also agreed to handover the custody of the child to the father of the victim. Pursuant to which, the application for divorce by mutual consent was filed before the Family Court on 09.03.2020. Even before divorce was granted, PW1 started moving around with her paramour Fiazuddin, thereby the erstwhile husband had given a complaint before the Royapuram Police Station on 12.05.2020 and PW1 was called for enquiry. PW1 wanted to wreck vengeance and extract money from her erstwhile husband had waited till mutual consent petition was decreed on 01.06.2020. Immediately, within three days of grant of divorce by mutual consent she had preferred the complaint alleging that the petitioner misbehaved with the child and her erstwhile husband abetted the petitioner. The petitioner had marked Exs.D1 to D16 during trial and had rebutted the presumption against him.

8. The learned counsel would submit that it is pertinent to note that after registration of the case on 04.06.2020, a statement under Section 164 Cr.PC was recorded from the victim girl on 06.07.2020. In the statement given before the Magistrate, the victim girl had specifically stated that the petitioner had hugged her due to love and affection and unknowingly the petitioner had touched her private parts. The learned counsel would further submit that the petitioner during cross examination had put a specific question to PW1 with regard to the complaint given by her husband on 12.05.2020 and she had admitted to the same. Further, she had also not denied the photos taken along with one Faizuddin, even prior to grant of divorce. In some photographs, she was also found to be in close intimacy with Faizuddin, and it has been marked as Ex.D6. Though PW1 had initially agreed to give custody of the child she had given the false complaint after grant of divorce only to take custody of child and only to extract money from her erstwhile husband. The petitioner who helped the erstwhile husband of PW1 has become victim of circumstances in this case.

9. The learned counsel for the petitioner would further submit that PW1 at the time of bail application during investigation had filed an affidavit before the Court stating that she reliably learnt that the petitioner had hugged her child which was misconceived and



by mistake the complaint was lodged and she had also stated that she has no objection to grant of bail to the petitioner.

10. PW1 during cross examination had admitted to the documents filed by the petitioner by way of defence and the petitioner by marking defence documents rebutted the presumption against the petitioner under Section 29 of POCSO Act. However, the trial Court had ignored the evidence let in by the petitioner in defence. He would further submit that the petitioner has several other arguable grounds available in the criminal appeal, which is not likely to be taken up for final hearing in the near future and the petitioner has got a fair chance of succeeding in the criminal appeal and hence would pray that the substantive sentence imposed against the petitioner may be suspended and the petitioner may be enlarged on bail.

11. The learned Government Advocate (crl. side) would submit that the petitioner is the maternal uncle of the father of the victim, due to matrimonial dispute, the father and the mother of the victim/PW1 got divorced by mutual consent on 01.06.2020. The victim girl while she was in her father's house had been abused by the petitioner and the victim had informed it to her mother/PW1 on 04.06.2020 and based on the complaint, the case has been registered.

12. The trial Court finding that the prosecution has proved the case beyond all reasonable doubt had found the accused guilty and convicted him.

13. Heard the counsel and perused the materials available on record, including the statement under Section 164 Cr.PC recorded from the victim which has been marked as Ex.P3 and the copies of the documents in Exs.D1 to D16 filed by the defence during trial.

14. In the statement recorded under Section 164 Cr.PC the victim girl had stated that the grand father had touched her unintentionally and hugged her due to love and affection, further PW1 had admitted to the complaint given by her husband against her on 12.05.2020 when the divorce application was pending and she has also admitted to the photographs relating to her relationship with one Fiazzuddin.

15. Considering the facts and circumstances of the case and also considering the submissions of the learned counsel for the petitioner, this Court is of the opinion, that the petitioner has made out the case for granting suspension of sentence, and the substantive sentence of imprisonment is suspended on certain conditions. Accordingly, till the disposal of the Criminal Appeal, suspension of sentence and bail are granted, on the following conditions :-

- i. The petitioner shall execute a bond for a sum of



Rs.15,000/- (Rupees Fifteen Thousand only), with two sureties, each for a like sum to the satisfaction of the Special Court for Exclusive Trial of Cases under POSCO Act, Chennai.

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ii. The petitioner shall appear before the Trial Court on the first working day of every month at 10.30am, until further orders.

The Criminal Miscellaneous Petition is ordered accordingly.

-sd/-

12/01/2022

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

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

TO

1 THE SPECIAL COURT FOR EXCLUSIVE TRIAL OF
CASES UNDER POCSO ACT, CHENNAI.

2 THE INSPECTOR OF POLICE,
W-15, ALL WOMEN POLICE STATION,
ROYAPURAM, CHENNAI.

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1C.C. to M/S.S.CONSCIOUS ILANGO Advocate on payment of
necessary charges SR.No.662

Order
in
CRL MP.11835/2021
in
CRL.A.562/2021
Date :12/01/2022

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

CSK 19/01/2022