



Crl.M.P.No.14024 of 2021
in Crl.A.No.502 of 2021

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P.N.PRAKASH, J.
AND
R.HEMALATHA, J.

(Made by *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 26.07.2021 passed in S.C.No.37 of 2015 on the file of the Sessions Court, (Special Court for Exclusive Trial of Cases under the POCSO Act), Chennai and to enlarge the petitioner on bail pending disposal of the above appeal.

2. The petitioner, who was the third accused in S.C.No.37 of 2015 before the Sessions Court, (Special Court for Exclusive Trial of Cases under the POCSO Act), Chennai, was convicted for the offence under Section 6 @ Section 4 of the POCSO Act and sentenced to undergo seven years imprisonment and to pay a fine of Rs.5,000/-, in default to undergo three months simple imprisonment.

3. Challenging the aforesaid conviction and sentence, the petitioner (A3) has filed Crl.A.No.502 of 2021 along with the instant miscellaneous petition seeking suspension of sentence and bail.



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4. Heard Ms.Gnanasoundhari, learned counsel for the petitioner (A3) and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

5. It is the case of the prosecution that the victim girl “X” (PW2) (name not disclosed for the sake of anonymity), who was a child, was lured into commercial sex by her own aunty and uncle viz., Krishnaveni (A1) and Elangovan (A2). The petitioner (A3) herein was one of the customers of AA 1 and 2, who had sexually abused “X” (PW2).

6. The learned counsel for the petitioner (A3) took us through page no.41 of the judgment of the trial Court and submitted that there appears to be mistaken identity with regard to the petitioner (A3) herein.

7. We are unable to countenance this submission in light of the finding given by the trial Court that “X” (PW2) has clearly identified the petitioner (A3) as one of the persons, who had sexually abused her. Moreover, we cannot re-appreciate the evidence of “X” (PW2) at this stage and the same can be done only at the time of the final disposal of the appeal.



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8. At this juncture, pertinent it is to point out that the Supreme 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 <https://www.mhc.ap.gov.in/judis>
² (1977) SCC (Cri) 559



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In view of the above reasoning and also taking into consideration the serious nature of the allegations against the petitioner (A3), we are of the opinion that this is not a fit case to grant suspension of sentence and bail to the petitioner (A3) and accordingly, this criminal miscellaneous petition stands dismissed.

(P.N.P.,J.) (R.H.,J.)
25.01.2022

nsd



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To

- 1.The Sessions Judge,
(Special Court for Exclusive Trial of Cases
under the POCSO Act), Chennai.
- 2.The Inspector of Police,
Anti Trafficking Cell,
Crime Branch CID,
Guindy, Chennai – 600 032.
- 3.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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