



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2022

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.M.P.No.13885 of 2021

in Crl.A.No.684 of 2021

Udhayakumar

... Petitioner

Vs.

State Represented by,  
The Inspector of Police,  
W-1, All Women Police Station,  
Thousand Lights, Greams Road,  
Chennai - 600 006.  
(Crime No.3 of 2018)

... Respondent

**PRAYER:** The Criminal Revision Case is filed under Section 389(1) of the Code of Criminal Procedure, pleaded to suspend the sentence imposed on the petitioner in S.C.No.184 of 2018 by the learned Sessions Judge, Special Court for Exclusive Cases under POCSO Act cases, Chennai by a judgement dated 22.11.2021 and enlarge the petitioner on bail.

For Petitioner : Ms.C.Shyaamala

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

**ORDER**

**(This case has been heard through Video Conferencing)**

This Criminal Miscellaneous Petition has been filed by the petitioner/appellant, seeking suspension of sentence of imprisonment, imposed against the petitioner in S.C.No.184 of 2018 dated 22.11.2021 by the learned Sessions Judge, Special Court for Exclusive Cases under POCSO Act cases, Chennai.



2. In and by the judgment of the Trial court, the petitioner/accused was convicted for the offence under Section 10 of Protection of Children from Sexual Offences Act 2012 and sentenced to undergo five years imprisonment and to pay a fine of Rs.5,000/- in default to undergo three months simple imprisonment, against which, the present Appeal has been filed.

3. The brief facts of the case is as under:-

The case of the prosecutin is that on 21.04.2018 at about 21.30 hours, the de facto complainant Anitha/ Mother of the victim, lodged a complaint before the respondent/Police by stating that she is residing at Choolaimedu, Chennai-94 and that she has got a female child aged about four years and her mother-in-law used to take the victim to nearby Kanniga Parameshwari Temple, situated at Choolaimedu, where the accused was serving as Poojari. It is the further case that the accused while offering prasatham to the victim child, with the sexual intent touched the neck, chest, stomach and private parts of the victim and pinched on her thigh and thereby, committed sexual assault against the victim. Further, on coming to know about the sexual assault committed by the accused to the victim child on several occasions, the mother of the victim child had lodged a complaint, requesting to take legal action.

(b) Based on the complaint, the case was registered by the Respondent in Crime No.3 of 2018 for the offence under Section 8 of POCSO Act 2012 on the same day at 21.30 hours. During the course of investigation, Inspector of Police examined the witnesses and recorded their statements and on the same day, arrested the accused and produced him before the Special Court for Exclusive Cases under POCSO Act cases, Chennai. Subsequently, after completion of investigation, charge sheet was filed against the accsued and the case was taken up for trial in S.C.No.184 of 2018.

(c) During trial, the prosecution examined the witnesses PW1 to PW8 including the Investigation Officer and Ex.P1 to Ex.P15 along with two Material Objects were marked. When questioned under 313 Cr.P.C, the accused denied the charges. After hearing both sides, the Trial Court, finding that the accused guilty and convicted and sentenced him as stated above.

4. The submissions of the learned counsel appearing for the petitioner are as under:-

(a) The Trial Court, failed to take into consideration the contradictions between the PW2/Mother of the victim child and PW3/Grand mother of the victim child. Though, the incident is stated to have happened in a Sannidhanam of a temple, no independent witnesses had been examined by the prosecution. Though, it is the case of the prosecution that the petitioner had pinched the girl on her thigh, the medical evidene has not supported the case of the



prosecution.

(b) The petitioner is confined in jail from the date of conviction on 22.11.2021. The petitioner/appellant has got a fair chance of succeeding in the Criminal Appeal. There are arguable points available in the Criminal Appeal, however, as the appeal is not likely to be taken for final hearing in the near future, would pray the sentence imposed against the petitioner/appellant may be suspended and the petitioner may be enlarged on bail.

5. Mr.S.Sugendran, learned Government Advocate (Crl.Side) would submit that the petitioner is a priest of a temple and the grand mother of the victim/PW3, used to take the victim child to the temple and there, the petitioner had touched the victim with sexual intent and had also pinched the victim on her thigh. The prosecution has examined the PW1 to PW8 and marked Ex.P1 to Ex.P15 along with two M.O's and the Trial Court, finding the prosecution has proved its case all reasonable doubts and the accused has found guilty and convicted and sentenced him as stated above.

6. Heard the learned counsel and perused the materials on record including the depositions of the witnesses.

7. Considering the facts and circumstances of the case and also considering the submissions of the learned counsel for the petitioner/appellant, this Court is of the opinion that the sentence of imprisonment can be suspended on certain conditions. Accordingly, till the disposal of the Criminal Appeal, suspension of sentence and bail are granted, on the following conditions :-

(a) Accordingly, the petitioner/appellant is ordered to be released on bail on condition to execute their own bond for a sum of **Rs.15,000/- (Rupees Fifteen Thousand only)** before the Superintendent of the concerned prison/Jailor concerned, in which the appellant has been confined and thereafter, on his release, the petitioner/Appellant shall execute two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for Exclusive Cases under POCSO Act cases, Chennai, within 15 days from the date of commencement of the Court's normal functioning, failing which the bail granted by this Court shall stand dismissed automatically and on further conditions that:

(b) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;



(c) The petitioner/appellant shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 am., until further orders.

8. The Criminal Miscellaneous Petition is ordered accordingly.

-sd/-

02/02/2022

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

TRUE COPY

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

TO

1 THE SESSIONS JUDGE,  
SPECIAL COURT FOR EXCLUSIVE CASES UNDER POCSO ACT  
CASES, CHENNAI.

2 THE INSPECTOR OF POLICE,  
W-1, ALL WOMEN POLICE STATION,  
THOUSAND LIGHTS, GREMS ROAD,  
CHENNAI.

3 THE PUBLIC PROSECUTOR  
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,  
CENTRAL PRISON, PUZHAL, CHENNAI.

+2 C.C. to M/S.C.SHYAAMALA Advocate on payment of necessary charges SR.NO.1668

Order

in  
CRL MP.13885/2021  
in  
CRL A.684/2021

Date :02/02/2022

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

TA-02/02/2022