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Crl.M.P.No.2956 of 2023 in Crl.A.No.201 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2023

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.2956 of 2023
in Crl.A.No.201 of 2023

1. Palanipriya
Wife of Senthilkumar
2. Santhi
Wife of K.Muthupandi .. Petitioners

-vs-

State represented by
The Inspector of Police
W-24 All Women Police Station
Teynampet
Chennai 600 006
(Crime No.04 of 2018) .. Respondent

Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure to suspend the sentence imposed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai 600 104 in Special S.C.No.77 of 2020 vide judgment dated 06.04.2022 and enlarge the petitioners on bail, pending disposal of the appeal.

For Petitioners :: Mr.R.John Sathyan
Senior Counsel for Mr.K.Sudhakar

For Respondent :: Mr.A.Gokulakrishnan
Additional Public Prosecutor



ORDER

(Order of the Court was made by S.S.SUNDAR, J.)

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(i) The first petitioner/A1 stands convicted for the offence under Sections 6 & 10 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act') as well as under Section 75 of the Juvenile Justice (Care & Protection) Act (for short, 'JJ Act') and sentenced to undergo imprisonment for life and also to pay a fine of Rs.25,000/-, in default to undergo simple imprisonment for 3 months for the offence under Section 6 of the POCSO Act; to undergo rigorous imprisonment for 7 years and also to pay a fine of Rs.25,000/-, in default to undergo simple imprisonment for 3 months for the offence under Section 10 of the POCSO Act; to undergo rigorous imprisonment for 3 years for the offence under Section 75 of the JJ Act.

(ii) The second petitioner/A2 stands convicted for the offence under Section 10 of the POCSO Act and sentenced to undergo rigorous imprisonment for 7 years and also to pay a fine of Rs.25,000/-, in default to undergo simple imprisonment for 3 months for the said offence.

Challenging the above conviction and sentence imposed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under the POCSO Act, Chennai in Special S.C.No.77 of 2020 vide judgment dated



06.04.2022, they have filed the appeal and pending the appeal, they have taken out the present application seeking to suspend the sentence and enlarge them on bail.

2. We have heard the learned senior counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent and also perused the materials available on record.

3. The version of the prosecution in this unfortunate case against the petitioners/A1 & A2, who are none other than the mother and grandmother of the victim, is that they used to kiss the victim on her lips and press her breast. As against the first petitioner, the allegation is serious that she used to keep the victim nude on her side. The serious allegations of sexual abuse alleged by the prosecution against the accused may exhibit their unnatural conduct. However, the version of the accused is that the victim was influenced to give evidence by the husband of the first accused. It is their further case that the victim has been really exploited by one Mr.Neelagandan and it is only in an effort to mislead the family and the victim, was forced to give evidence against the accused, who are her mother and grandmother. Moreover, the complaint has come only after the



matrimonial dispute between the father and the mother of the victim. In

WEB this kind of cases, the circumstances also speak for itself and the learned trial Judge has failed to consider several aspects which are relevant. Considering the fact that the whole case of the prosecution appears to be improbable and unnatural, this Court finds that the trial Court has not considered the case of defence in proper perspective and the findings are vitiated on several factors. It is also to be noted that despite the victim living in the same house, she had not complained this to her father or grandfather whom, according to her, are very close to the victim and there is no reason why she should not report this to her father and grandfather before the dispute between the husband and wife started. Therefore, this Court finds a prima facie case in favour of the accused for suspension of sentence.

4. Accordingly, this criminal miscellaneous petition stands allowed and the substantive sentence of imprisonment imposed on the petitioners/A1 & A2 is suspended and they are granted bail on the following conditions:-

- (i) Each of the petitioners shall execute a bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) with two sureties, of whom one should be a blood relative, each for a likesum, to the satisfaction of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai.



Crl.M.P.No.2956 of 2023 in Crl.A.No.201 of 2023

(ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Sessions Judge may obtain a copy of their Aadhar card or Bank Pass Book and mobile numbers to ensure their identity; and

(iii) The petitioners shall appear before the trial Court on the first working day of every month at 10.30 a.m., until the disposal of the appeal and if they are not able to appear before the trial Court on any day, they shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of their absence, as directed by the trial Court.

(S.S.S.R.,J.) (S.M.,J.)
12.10.2023

SS

To

1. The Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai 600 104
2. The Inspector of Police, W-24 All Women Police Station, Teynampet, Chennai 600 006
3. The Superintendent, Special Prison for Women, Puzhal, Chennai
4. The Public Prosecutor, High Court, Madras



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S.S.SUNDAR, J.

AND

SUNDER MOHAN, J.

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