



Crl.M.P.No.5647 of 2023
in Crl.A.No.452 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.5647 of 2023

in

Crl.A.No.452 of 2023

Vargish

... Petitioner

Vs.

State rep by

The Inspector of Police,
Peelamedu Police Station,
Coimbatore District.
(Crime No.235 of 2014)

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C, praying to suspend the sentence made in Spl.C.C.No.46 of 2019, on the file of the learned Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore dated 29.03.2023 and enlarge the petitioner on bail.

For Petitioner : Mr.J.Jayan

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment made in Spl.C.C.No.46 of 2019, on the file of the learned Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore dated 29.03.2023 and enlarge the petitioner on bail.

2.The petitioner/accused in Spl.C.C.No.46 of 2019 was convicted by the Trial Court by judgment dated 29.03.2023 for offence under Sections 9(m) and 10 of POCSO Act, 2012 and Sections 363 and 365 of IPC and sentenced to undergo sever years rigorous imprisonment for offence under Section 9(m) and 10 of POCSO Act, five years rigorous imprisonment for offence under Section 363 IPC and five years rigorous imprisonment for offence under Section 365 IPC. Aggrieved by the same, the petitioner/accused filed Crl.A.No.452 of 2023 along with the instant miscellaneous petition seeking suspension of sentence and bail.



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3.The contention of the learned counsel for petitioner is that the case projected against the petitioner is that the victim girl/PW1 was standing alone quite some time in school uniform in the late evening hours. Noticing the same, the petitioner enquired her and found that the victim girl was fearing for her father's beating for not going to school properly. Then the petitioner called her, took her in his car, taken her to isolated place and he was supposed to have made sexual assault by removing her top, pant and touching her breast. In the meanwhile, on receipt of repeated phone calls from the victim's family, he put her in the dicky and taken near her house. She was found in unconscious state, hence, a complaint lodged.

4.According to the petitioner, the timing is an important factor. PW4 stated that on 02.04.2014 at about 6.00 p.m. the victim girl was found inside the car dicky. PW2 on the other hand stated that till 8.00 p.m. there was a search for the victim girl. Further the victim was found in the dicky at



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that time and thereafter, she lodged a complaint/Ex.P2 to the respondent police. PW3 states that at about 7.15 p.m. the victim was found in the car dicky. PW7 states that it is about 10.00 p.m. PW6 evidence is that at about 11.00 p.m. they asked for the car key of the petitioner. Initially the petitioner refused to hand over the same, thereafter dicky was opened and found the victim in the car dicky at about 11.00 p.m. PW16 mother of the victim gives a different version stating that on 02.04.2014 at about 11.30 p.m. the victim was found. Further, PW16 states that she lodged a complaint, on the other hand, PW2/Aunt of the victim lodged a complaint and not PW16. There is a vital contradictions with regard to the time and manner in which the occurrence took place. These facts have not been considered by the Lower Court. Further, the victim girl voluntarily got into the petitioner's car. In view of the same, there is no question of any kidnapping. The medical evidence confirms that the victim had no marks, bruises to show that she was subjected to sexual assault. Learned counsel further submitted that the



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petitioner is 73 years old with medical ailments and now he is in confinement. Hence, he prays for granting suspension of sentence to the petitioner.

5.The learned Additional Public Prosecutor strongly opposed the petition stating that on the basis of the complaint of PW2/Aunt of the victim girl, with whom the victim girl was living, a case in Crime No.235 of 2014 for offence under Section 366(A) of IPC was registered on 02.02.2014. Thereafter, from the statement of the victim girl and others, the case was altered to offence under Sections 365, 366(A) and 7 r/w 8, 9(m) r/w 10 of POCSO Act. The victim girl was kidnapped by the petitioner, who was running a workshop near the victim's house, finding that the victim girl living with her aunt and uncle and she was at their mercy and the victim girl was not attending the classes properly and moved with her friends. On 02.04.2014 finding that the victim was standing alone near the school, the petitioner took his car near the victim, called her inside the car by offering biscuits and fruits.



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Thereafter, enquired her and found that she was fearing for beating by her father and waiting for her father to leave her house. Taking advantage of the same, the victim was taken to the isolated place in the dark. There she was subjected to sexual assault and thereafter the victim girl was concealed in the dicky. From the witnesses present near the scene of occurrence and others, the victim's aunt and father came to know about the petitioner taking victim girl in his car. After collecting his phone number, called the petitioner and thereafter, the victim girl was secured. Since it was admitted that the occurrence happened on 02.04.2014 at late evening and night hours, the timing could not be an important factor.

5.1.PW1/victim girl clearly stated about she being subjected to sexual assault by the petitioner right from initial stage. In her 164 statement as well as in her evidence before the Lower Court, she confirmed the same.

The petitioner could not give any reason to probabalise his defence that he has



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been falsely implicated. The Trial Court considering all these aspects had rightly dismissed the petition and hence, prays for dismissal of the petition.

6.Considering the submissions made and on perusal of the material, the victim girl's statement is convincing and there is no reason or motive for the petitioner to be falsely implicated. The act of the petitioner found proved by the Trial Court. This Court, find no ground for bail, for the present. Hence, this Court is not inclined to suspend the sentence imposed on the petitioner. Accordingly, this Criminal Miscellaneous Petition is dismissed.

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Index : Yes/No
Internet : Yes/No
Speaking order / Non-speaking order
rsi



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M.NIRMAL KUMAR, J.

rsi

To

- 1.The Inspector of Police,
Peelamedu Police Station,
Coimbatore District.
- 2.The Special Judge,
Special Court for Exclusive Trial of Cases
under POCSO Act, Coimbatore.
- 3.The Public Prosecutor,
High Court, Madras.

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