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*Crl.M.P.No.8255 of 2023
in Crl.A.No.155 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2023

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.8255 of 2023
in Crl.A.No.155 of 2023

G.Loganthan

... Petitioner

Vs.

1.The State rep. by
The Inspector of Police,
AWPS-Kangeyam P.S.,
Tiruppur District.
[Crime No.16 of 2020]

2.Rajeswari

... Respondents

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to enlarge the petitioner on bail by suspending the sentence imposed in Spl.S.C.No.12 of 2021 on the file of the Sessions Judge, Magalir Neethimandram, Fast Track Mahila Court of Tiruppur dated 12.09.2022 pending disposal of the above appeal.

For Petitioner : Mr.Philip Ravindran Jesudoss

For R1 : Mr.A.Damodaran
Additional Public Prosecutor

For R2 : No appearance



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Sessions Judge, Magalir Neethimandram, Fast Track Mahila Court, Tiruppur by order dated 12.09.2022 made in Spl.S.C.No.12 of 2021 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused was convicted by the Trial Court in Spl.S.C.No.12 of 2021 for the offences under Sections 9(m) r/w. 10 (2 counts) of Protection of Children from Sexual Offences Act, 2012 [POCSO Act], 11(i) r/w. 12(2 counts) of POCSO Act and Section 506(ii) [2 counts] of IPC and sentenced him to undergo five years rigorous imprisonment for each count and to pay a fine of Rs.5,000/- each, in default, to undergo six months simple imprisonment for the offence under Section 9(m) r/w. 10 (2 counts) of POCSO Act, to undergo three years rigorous imprisonment for each count and to pay a fine of Rs.1,000/- each, in default, to undergo six months simple imprisonment for the offence under Section 11(i) r/w. 12(2



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counts) of POCSO Act and to undergo two years rigorous imprisonment for each count and to pay a fine of Rs.1,000/-, in default to undergo six months simple imprisonment for the offence under Section 506(ii) [2 counts] IPC. All the sentences to run concurrently. Against which, the present appeal is filed along with suspension of sentence.

3.The brief facts of the case is that on 27.10.2020, when the victim girl/P.W.1 aged about eight years and the victim boy/P.W.2 aged about nine years were playing outside along with other children in front of the petitioner's house, the petitioner called both the victims to his house and at the first instance, asked the victim girl alone to enter the bedroom, disrobed his pant, showed his private part, asked her to hold and shake the same, thereafter sent the victim girl outside and thereupon, called the victim boy inside the bedroom and repeated the said Act. Thereafter, the victim girl disclosed the same to her mother/P.W.3, who picked up quarrel with the petitioner and lodged a complaint. The respondent police registered a case, visited the scene of occurrence, prepared observation mahazar and rough sketch, recorded the statement of the victims, produced the victims before



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the Magistrate, 164 statement recorded and after recording the statement of other witness and collecting the materials, charge sheet was filed before the Lower Court.

4.Before the Trial Court, on the side of the prosecution P.W.1 to P.W.8 were examined and Ex.P1 to Ex.P15 were marked. On the side of the petitioner/accused, no witness was examined and no documents were marked. The victim girl belongs to Madhari Caste which comes under Scheduled Caste community, hence appropriate section under Section under SC/ST Act also included. On conclusion of the trial, the Trial Court convicted the petitioner as stated above.

5.Despite service of notice and the name of the second respondent printed in the cause list, there is no representation on behalf of the second respondent.

6.The contention of the learned counsel for the petitioner is that in front of the petitioner's house, children including the victims used to play



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and create disturbance, hence the petitioner often shouts at the children, due to which there will be a scuffle between the petitioner and the parents of the children. He would submit that since the petitioner often shouts at the children, to teach a lesson the petitioner, falsely implicated using the children. He further submit that in this case except for P.W.1 even P.W.2/victim boy and P.W.3/mother of the victim girl not supported the case of the prosecution. Except the official witnesses, no other witnesses supported the case of the prosecution. He further submitted that the statement of P.W.1 is that both P.W.1 and P.W.2 entered into the house of the petitioner and at that time, sexual assault was committed by the petitioner which was shared by P.W.1 and P.W.2, but on the other hand P.W.2 not supported the same and hence, the statement of P.W.1 becomes highly doubtful. He would further submit that except for stray accusation by P.W.1, there is no other material against the petitioner and he is in prison for almost two years.

7.Learned Additional Public Prosecutor submitted that on the complaint of P.W.3/mother of P.W.1, case was registered, immediately the



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Police rushed to the scene of occurrence, examined the witnesses present there, arrested the accused and produced before the Doctor. Thereafter, the victims were produced before the Magistrate, 164 statement recorded confirming the occurrence and later, for the reasons best known P.W.2, P.W.3 and P.W.5 have not supported the case of the prosecution. He would submit that P.W.1/victim girl clearly stated about the sexual assault. He would further submit that the Trial Court considering the same had rightly convicted the petitioner and hence, prays for dismissal of the petition.

8.Considering the submissions made and on perusal of the materials, it is seen that except for the statement of P.W.1, P.W.2 who is the corroborating witness and P.W.3/mother of P.W.1 have not supported the case of the prosecution and hence, the evidence of P.W.1 needs re-consideration. Further, considering the period of incarceration and also the facts and circumstances of the case, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.

9.Accordingly, the Substantive Sentence of Imprisonment imposed on



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the petitioner is suspended till the disposal of the appeal and the petitioner is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the Sessions Judge, Magalir Neethimandram, Fast Track Mahila Court, Tiruppur.

10.Further, the petitioner shall appear before the Trial Court once in three months at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the Trial Court on that day, he 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 his absence as directed by the Trial Court.

11.Accordingly, this Miscellaneous Petition is ordered.

07.12.2023

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M. NIRMAL KUMAR, J.

cse

To

- 1.The Inspector of Police,
AWPS-Kangeyam P.S.,
Tiruppur District.
- 2.The Sessions Judge,
Magalir Neethimandram,
Fast Track Mahila Court, Tiruppur.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.

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