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Crl.M.P.No.9105 of 2023 in Crl.A.No.689 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.No.9105 of 2023
in Crl.A.No.689 of 2023

Nishar,
A/o.Shakmadhar

... Petitioner

Vs.

1.State represented by
The Deputy Superintendent of Police,
Tirukoilur Sub-Division,
Tirukoilur,
Villupuram District.
(Cr.No.10/2021).

2.S.Manjula

... Respondents

[2nd respondent impleaded as per order of
this Court, dated 15.11.2023 in
Crl.M.P.No.9462 of 2023 in Crl.A.No.689
of 2023.]

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(i) of Cr.P.C., to suspend the sentence imposed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Villupuram in S.C.No.131/2021 dated 6.6.2023 and release the petitioner on bail pending disposal of the above said Criminal Appeal.



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For Petitioner : Mr.M.Selvam
For R1 : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed against the petitioner in the judgment, dated 06.06.2023 in Special S.C.No.131 of 2021 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under POCSO Act, Villupuram (trial Court).

2.The conviction and sentence passed against the petitioner by the trial Court are as follows:

- For offence under Section 341 IPC, the petitioner is convicted and sentenced to undergo Rigorous Imprisonment for one month and to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for one week.
- For offence under Section 8 of the Protection of Children from Sexual Offence Act, 2012, the petitioner is convicted and sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.10,000/-, in default to undergo Simple Imprisonment for three months.



- For offence under Section 3(1)(w)(i) of SC/ST (POA) Amendment Act, 2015, the petitioner is convicted and sentenced to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.5,000/-, in default to undergo Simple Imprisonment for two months.
- For offence under Section 3(2)(va) of SC/ST (POA) Amendment Act, 2015, the petitioner is convicted and sentenced to undergo Rigorous Imprisonment for one month and to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for one week.

3. Notice taken to the 2nd respondent/defacto complainant/PW1, Proof of Service filed. Name of the 2nd respondent printed in the cause list. Neither the 2nd respondent nor any counsel appeared on behalf of the 2nd respondent.

4. The contention of the petitioner is that the case projected against the petitioner as though the victim girl who is a minor, belongs to Scheduled Caste community, was called by the petitioner for plucking plantain flower in the field, at that time, he groped the victim girl, touched her throughout her body and thereby, caused non-penetrative sexual assault on her. The petitioner falsely implicated in this case since some political parties demanded money and also demanded pathway to the burial ground through the petitioner's land, which the petitioner refused. The petitioner belongs to



Jamath group and Jamath also failed to yield to the political parties demand of money, hence, there was some animosity between them. Taking advantage of the same, the said political party projected the case against the petitioner by using the victim girl. He further submitted that the adjacent land to the petitioner examined as DW2, who confirmed that there was dispute between the petitioner and the political party with regard to demand of pathway through the petitioner's land. Earlier to the complaint (Ex.P1), there was a complaint by the said political party against the petitioner who gone to the Police station where the Police attempted compromise forcing the petitioner to give the land for burial ground, which he refused. DW2 and DW4 who are from the same village confirmed about the dispute between the petitioner and the political party. Thus, the victim who is a regular worker in the petitioner's farm has been made to give a false complaint against the petitioner as though he made improper touch with sexual intention. The trial Court failed to consider these aspects with the entire villages supporting the petitioner's contention and also the motive of the victim girl to implicate the petitioner. He further submitted that the maximum sentence against the petitioner is only three years and the trial



Court suspended the sentence against the petitioner enabling the petitioner to file appeal and suspension of sentence.

5.The learned Additional Public Prosecutor appearing for the respondent Police submitted that on the complaint of the victim girl, a case has been registered. The victim girl clearly stated about the petitioner taking her to isolated place, inside the field on the guise of plucking plantain flowers and groped her and also made improper touch all over her body. Immediately, the victim girl lodged the complaint, the respondent Police registered the case, enquired the victim girl and also others present in the scene of occurrence, thereafter, the victim girl sent to the hospital. The Doctor examined the victim girl and confirmed the allegations against the petitioner. Before the trial Court, PW1 to PW19 examined and Exs.P1 to P14 marked. On the side of the defence, no document marked, but DW1 to DW4 examined to project as though there was some dispute with regard to passage of pathway to the burial ground to the Scheduled Caste community which was opposed by the petitioner. The trial Court on the evidence produced by the prosecution found that the evidence of the victim girl is believable, corroborated with the evidence of other witnesses and rightly



convicted the petitioner. He fairly submitted that there is no case against the petitioner and further, the trial Court had suspended the sentence of the petitioner.

6.Considering the submissions and on perusal of the materials, it is seen that earlier to the complaint (Ex.P1), there was some commotion between the petitioner and the political group with regard to passage of pathway for burial ground through the petitioner's land and the same is also confirmed by DW2. It is also seen that there is no case against the petitioner similar in nature. Hence, this Court is inclined to grant bail suspending the sentence.

7.Accordingly, the Substantive Sentence of Imprisonment imposed on 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 trial Court.

8.Further, the petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the Trial Court



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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.

9. Accordingly, this Criminal Miscellaneous Petition is ordered.

15.11.2023
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To

1. The Special Court for Exclusive Trial of Cases registered under
POCSO Act,
Villupuram.
2. The Deputy Superintendent of Police,
Tirukoilur Sub-Division,
Tirukoilur,
Villupuram District.
3. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR., J.

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