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Crl.MP.No.11298/2023 in Crl.A.No.94/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.11298/2023 in
Crl.A.No.94/2021

Mr.R.Arun Pandiyan

...Petitioner/Appellant/A1

Versus

State rep.by Inspector of Police

Neyveli All Women Police Station,

Cuddalore District.

Crime No. 04 of 2017.

...Respondent/Respondent/Complainant

Prayer:- Civil Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence Judgment 14.10.2020 made in Spl.S.C.No.17/2019 passed by the learned Sessions Judge, Special Court (POCSO Act Cases), Cuddalore and enlarge the petitioner on bail till the disposal of the above Criminal Appeal.

For Petitioner : M/s.B.B.Sendhilkumar

For Respondent : Mr.A.Gokulakrishnan



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Additional Public Prosecutor

ORDER

[Order of the Court was made by SUNDER MOHAN, J]

(1) This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by Judgment and order dated 14.10.2020 passed in S.C.No.17/2019 on the file of the learned Sessions Judge, Special Court for POCSO Act, 2012, Cuddalore and to enlarge the petitioner on bail pending disposal of the appeal.

(2) The petitioner, who is the first accused in the above Sessions Case, was convicted under Section 5(1) r/w 6 of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') and Section 9 of Prevention of Child Marriage Act, 2006 and sentenced as follows:

Sl.No.	Offence under Section	Sentence imposed
1	5(1) r/w 6 of POCSO Act	To undergo life imprisonment and to pay a fine of Rs. 5,000/- in default 3 months SI.
2	9 of Prevention of Child Marriage Act, 2006	To undergo two years RI and also to pay a fine of Rs.1000/- in default to undergo three months RI.



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The period of sentences imposed above are directed to run concurrently.

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(3)Challenging the above conviction and sentence, the petitioner/A1 has filed the above Criminal Appeal and he is seeking suspension of sentence and bail in the present petition.

(4) Heard the learned counsel for the petitioner/A1 and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/State.

(5) The case of the prosecution is that the victim girl was studying in 12th Standard in NNC Girls Higher Secondary School, Neyveli. A1-Arunpandiyan, aged 23 years developed a liking for the victim girl and he followed the girl while she was going to school. In the month of July, the A1 called the victim girl and they both met in Eucalyptus grove and A1 forcibly had intercourse with the victim girl. Again on 03.09.2016 when the victim girl was talking with A1, the victim girl's grand mother



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and uncle saw both of them and warned them that they will complain to the police. On 05.09.2016, A4 Rasathi, A6 Vallimayil went to the victim girl and warned her that both A1 and the victim had intercourse and they both committed the mistake as such they both can get married to each other. They advised the victim girl to come to A1's house and they got A1 married to the victim girl in Mariamman Temple on 05.09.2016 at about 13.30 hours. A1 to A7 were present at the time of performing the illegal marriage. After that they took the victim girl to A1's house. On 07.09.2016 all the relatives of A1 went to Sirumushnam, leaving A1 and the victim girl alone. A1 in a drunken mood forcibly sexually assaulted the victim girl. On 09.09.2016 A1 told that he is going to Sri Mushnam, but he went to Qatar leaving the victim girl. Hence, She lodged a complaint and Inspector of Police Neyveli All Women Police Station, Cuddalore District had charge sheeted the accused 1 to 7 for the offences under Section 5 (1) (m) r/w 6 of POCSO Act, 17 & 10 of POCSO Act 2012 and Section 9 of Child Marriage Act, 2006. After trial, the learned Sessions Judge, convicted and sentenced the petitioner/A1, as stated in Paragraph No.2 of this order.



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(6) Though several grounds have been raised by the petitioner herein, the learned counsel for the petitioner submitted that though it is the case of the prosecution that on three occasions, the accused indulged in physical relationship with the victim, no complaint was filed for nearly one year; that the complaint was filed only on 09.08.2017 after the petitioner gave a legal notice to the victim and her family members on 03.08.2017; that the entire complaint is an after thought; that there is no acceptable evidence to believe the prosecution case; that there are several inconsistencies in the evidence of the victim; and that the petitioner is in custody for nearly three years i.e., from the date of conviction and therefore, the sentence imposed on the petitioner may be suspended.

(7) Heard the learned Additional Public Prosecutor who vehemently opposed for grant of the relief of suspension of sentence to the petitioner herein as there are specific overt acts against the petitioner herein. Further, the prosecution has proved its case beyond reasonable doubt and hence, prayed for dismissal of the petition.



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(8) This Court considered the fact that the occurrence in the instant case took place during the month of September 2016 and the complaint was lodged only in September 2017. There are inconsistencies in the evidence of the victim. It is also seen that the petitioner is in incarceration since the date of conviction i.e., 14.10.2020.

(9) Therefore, taking into consideration all the above facts and the fact that the appeal is not likely to be taken up for final hearing in the near future, we are of the considered view that it is a fit case to grant the relief of suspension of sentence to the petitioner (A1) herein.

(10) Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment imposed on the petitioner (A1) is **suspended** on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, of whom, one should be



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a blood relative, each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for Exclusive Trial for cases under POCSO Act, Cuddalore;

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

(iii)The petitioner 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 he is not able to appear before the trial Court on any 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.



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[SSSRJ] [SMJ]

16.10.2023

ars/dk

Internet: Yes

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S.S.SUNDAR, J

and

SUNDER MOHAN, J

dk

To

- 1.The Sessions Judge,
Special Court (POCSO Act Cases),
Cuddalore
- 2.The Inspector of Police
Neyveli All Women Police Station,
Cuddalore District.
- 3.The Superintendent of Prisons,
Central Prison, Cuddalore.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.

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