



Crl.M.P.No.16307 of 2023
in Crl.A.No.1094 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.M.P.No.16307 of 2023

in

Crl.A.No.1094 of 2023

E.Senthilkumar

... Petitioner

Vs.

State represented by
Inspector of Police,
All Women Police Station,
Arani, Tiruvannamalai District.

... Respondent

Criminal Miscellaneous Petition filed under Section 389(1) Cr.P.C. to suspend the sentence passed by the learned Sessions Judge, Special Court for POCSO Act Cases, Tiruvannamalai, in Spl.S.C.No.69 of 2022, dated 16.06.2023, and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.



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For Petitioner : Mr.V.Pavel

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

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

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Special Court for POCSO Act Cases, Tiruvannamalai, in Spl.S.C.No.69 of 2022, by judgment dated 16.06.2023, and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

2.The case of the prosecution is that the accused is the father of the victim, who is the *de facto* complainant, who was aged about 14 years at the time of occurrence; that the mother of the victim had died; that the accused had extramarital affairs; that in January, 2021, when the victim was alone in the house, the accused asked her to stay with him for one day and listen to what he was saying; that the accused, by threatening the victim by showing



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deadly weapons, committed the offence of penetrative sexual assault on the victim and intimidated her not to disclose it to anyone. Hence, the victim lodged a complaint with the respondent Police on 22.03.2022, based on which an FIR was registered in Crime No.4 of 2022, against the accused, for the offences under Sections 376(2)(f) and 506(ii) IPC r/w. Section 5(l) & 5(n) r/w. Section 6 of POCSO Act, 2012.

3.The case then culminated into Spl.S.C.No.69 of 2022 and the petitioner was tried by the learned Sessions Judge, Special Court for POCSO Act Cases, Tiruvannamalai, and ultimately, the petitioner/accused was convicted and sentenced as follows :

<i>Conviction</i>	<i>Sentence</i>
Section 506(ii) IPC	Rigorous Imprisonment for a period of 7 years
Section 376(2)(n) IPC and Sections 5(l), 5(h), 5(n) r/w.6 of POCSO Act	Life Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo Simple Imprisonment for one year



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4.Challenging the above conviction and sentence, the accused has filed the above Criminal Appeal and he seeks suspension of sentence and bail in the present miscellaneous petition.

5.Heard the learned counsel for the petitioner/accused and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/State.

6.This is a case where conviction was based on presumption, even though the victim girl (P.W.1) had not supported the prosecution case and had turned hostile. The accused is none other than the father of the victim (P.W.1). Though the victim girl is said to have given the complaint, her evidence before the Court contains lot of self-contradictions. Nothing has been elicited in the cross-examination in support of the prosecution case except making suggestions which were denied by P.W.1. Every other witness who was examined turned hostile.



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7.This Court finds that the evidence is not cogent in this case to convict the accused. As a matter of fact, probabilities are more in favour of the accused to hold him not guilty, as this Court is unable to find any positive evidence to sustain the conviction of the accused. Therefore, this Court is of the view that a *prima facie* case is made out in favour of the petitioner and therefore, this Court is inclined to suspend the sentence imposed on the petitioner and grant bail to him.

8.Accordingly, this Criminal Miscellaneous Petition stands **allowed** and the sentence of imprisonment imposed on the petitioner/accused is **suspended** and he is granted bail 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 a blood relative, each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for POCSO Act Cases, Tiruvannamalai.
- (ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate 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



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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.

(S.S.S.R., J.) (S.M., J.)
14.12.2023

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Internet : Yes

Index : Yes / No

To

- 1.The Sessions Judge,
Special Court for POCSO Act Cases,
Tiruvannamalai.
- 2.The Inspector of Police,
All Women Police Station,
Arani, Tiruvannamalai District.
- 3.The Superintendent,
Central Prison,
Vellore.
- 4.The Public Prosecutor,
High Court, Madras.

S.S. SUNDAR, J.
and



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