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*Crl.M.P.No.15806 of 2023
in Crl.A.No.1070 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2023

CORAM:

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

Crl.M.P.No.15806 of 2023
in
Crl.A.No.1070 of 2023

R.Mohamed Shathik @ Shathik

... Petitioner/Accused

Vs.

The State Rep by
The Inspector of Police,
Kattumannar Koil Police Station,
Kattumannarkoil Taluk,
Cuddalore District.
Crime No.567/2021.

... Respondent

PRAAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence imposed on the petitioner/Appellant in judgment made in Spl.S.C.No.69 of 2021 before the Court of Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Cuddalore, Cuddalore District dated 08.11.2022 and enlarge the petitioner on bail pending disposal of this Criminal Appeal.

For Petitioner : Mr.C.Venkatesan

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 imposed by the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Cuddalore by judgment dated 08.11.2022 made in Spl.S.C.No.69 of 2021 and enlarge the petitioner on bail pending disposal of the above appeal.

2. The petitioner/Accused in Spl.S.C.No.69 of 2021 was convicted by the trial Court for offences under Sections 451, 363, 344 of IPC and 7 and 8 of POCSO Act and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo one month simple imprisonment for offence under Section 451 IPC, five years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months simple imprisonment for offence under Section 363 IPC, three years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo one month simple imprisonment for offence under Section 344 IPC and five years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months simple imprisonment for offences under Sections 7

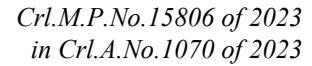


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and 8 of POCSO Act. Against which, the petitioner/accused has filed Crl.A.No.1070 of 2023 along with the instant miscellaneous petition seeking suspension of sentence and bail.

3. The case of the prosecution is that one Shahul Hameed/de-facto complainant lodged a complaint stating that his minor daughter born on 18.05.2007, who was studying 9th standard, was kidnapped by his sister's grandson Mohamed Shathik, the petitioner herein, who is aged about 19 years. The de-facto complainant employed the petitioner in his shop for assistance. The petitioner used to collect lunch for the de-facto complainant from his house. Using his frequent visitation to the de-facto complainant's house, the petitioner forced his minor daughter to have love affair with him. On 27.09.2021 finding that his daughter is alone in her house, the petitioner entered into the house, hugged and forcibly kissed her daughter. Thereafter, on 29.09.2021, the petitioner called the victim girl through his father's mobile and asked her to come out. Not knowing about the consequences, the victim girl came out from her house and she was taken away by the petitioner initially to Swamy Malai on 30.09.2021 and they stayed in a lodge. Thereafter went to Salem. On 01.10.2021, petitioner took the victim girl



4. Before the trial Court, on the side of prosecution PW1 to PW18 examined, marked Exs.P1 to P19 and marked material object M.O.1. On the side of the accused no witnesses examined and no documents marked. On conclusion of the trial, the trial Court convicted the petitioner as stated above.

5. The contention of the petitioner is that the petitioner is a teenager aged about 19 years, who was employed in the de-facto complainant's shop for assistance. The petitioner is none other than the de-facto complainant's sister's grandson. The petitioner's job was to collect lunch from the de-facto



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complainant's house. At that time, the daughter of the de-facto complainant and the petitioner developed love affair between them, which was objected by the victim's parents. It was the victim girl, who forced the petitioner to take away her, since the de-facto complainant was planning to marry the victim girl to a elder person and if the petitioner refused to take her, she would commit suicide. Having left with no other option the petitioner who is a teenager, not knowing about the seriousness and consequences, on the compulsion of the victim girl, he accompanied the victim girl to various places.

5.1. Further submitted that the petitioner not conducted himself in improper manner. Though prosecution has projected as penetrative sexual assault, the victim girl's statement as well as medical report confirms there was no penetrative sexual assault. During the time of their stay at various places, it was only utmost friendly embarrassment but it has been projected as though the same has been committed with sexual intent. Further submitted that PW1/victim girl clearly stated in her evidence that petitioner had not committed any sexual assault. PW9 and PW15, the Doctors, who examined the victim girl, in their report/Ex.P9 and Ex.P13 clearly confirmed that there



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is no injuries, bruises or any marks on the victim girl. Further, hymen was found intact and there was no evidence of recent sexual contact. The victim in her evidence in 164 statement/Ex.P1 clearly stated that there was no sexual assault by the petitioner. But the trial Court on its own interpretation convicted the petitioner based on the evidence of PW15. He further submitted that the petitioner is in prison from 08.11.2022. Further, the petitioner has arguable points and fair chance of success in this appeal. Hence, he prays for granting suspension of sentence to the petitioner.

6. Learned Additional Public Prosecutor filed counter stating that the petitioner forcibly taken away the minor victim girl, who was studying 9th standard, to various places and stayed in lodges at Salem, Dindugal, Coimbatore and while on their way to Chennai, they got down near Ulundurpet, where the local jamad got suspicion about the petitioner and minor girl, enquired them, thereafter informed the parents of the victim girl. In the meanwhile, the victim girl's father/PW2 lodged a complaint and a case in Crime No.567 of 2021 was initially registered for offence under Section 366(A) of IPC. Later, investigating officer took up investigation, visited scene of occurrence, prepared mahazar and rough sketch and enquired the



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witnesses present in the scene of occurrence. After securing the victim and arrest of the petitioner, both were produced for medical examination. After collecting medical reports and recording statement of witnesses, charge sheet filed in this case. During trial, PW1 to PW17 examined, Exs.1 to 19 marked. The trial Court took the case on file for offence under Sections 451, 366, 344 of IPC and 5(l), 5(n), 6 of POCSO Act. In this case, the victim not supported the case of the prosecution. She was treated as hostile and cross examined in detail. PW2 and PW3 are the parents of the victim girl, who had stated about the victim being induced by the petitioner and taken away from the lawful custody. PW4 is the Receptionist of Royal Park Hotel and Lodge, who confirms about the petitioner and victim girl staying together. Further, CCTV camera recordings have been produced by PW5. PW9 and PW15 are the Doctors, who examined the victim girl. PW15 is the second Doctor, who re-examined the victim girl. In her evidence PW15 states that penetrative sexual assault could have been committed by the petitioner. PW8 is the Doctor, who confirmed the potency of the petitioner. PW14/Principal of the School, where the victim studied, confirms that the victim was minor. Further submitted that the trial Court on the evidence and materials produced, had rightly convicted the petitioner. He fairly submitted that the petitioner is



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none other than the de-facto complainant's sister's grandson and the petitioner is also aged about 19 years at the time of occurrence. Hence, prays for dismissal of the petition.

7. Considering the submissions made and on perusal of the material it is seen that the petitioner was employed by the de-facto complainant/PW2 in his shop for assistance. He regularly collects the lunch for PW2 from his house. At that time, the petitioner and the victim girl/PW1 developed interest between them and it was opposed by PW2 and PW3/parents of the victim. In this case, PW1 clearly stated that except embarrassing each other, no sexual intent act taken place, earlier and during the stay at various lodges and hotels at Salem, Dindugal, Coimbatore, there was no penetrative sexual assault by the petitioner. PW1's evidence before the trial Court as well as in her 164 statement/Ex.P1 confirms the same. PW9 and PW15- Doctors confirms that victim girl had hymen intact and there was no injuries, bruises on the victim girl. Without knowing the seriousness, both of them eloped and gone out in search of job. Due to pandemic situation they could not immediately secure the job and thereafter on their way, they were apprehended and the petitioner is now in gallows. This Court finds that the petitioner had no sexual intent



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and victim's statement only supports the case of the petitioner. Further, the petitioner is in prison from 08.11.2022. Further taking note of the fact that there are arguable points involved in this appeal and it would take some time for the appeal to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioner.

8. 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.5,000/- (Rupees Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore.

9. 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.



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M. NIRMAL KUMAR, J.

rsi

10. Accordingly, this Miscellaneous Petition is ordered.

30.10.2023

rsi

To

- 1.The Inspector of Police,
Kattumannar Koil Police Station,
Kattumannarkoil Taluk,
Cuddalore District.
- 2.The Sessions Judge,
Special Court for Exclusive Trial of cases
under POCSO Act,
Cuddalore, Cuddalore District.
- 3.The Superintendent,
Central Prison,
Cuddalore.
- 4.The Public Prosecutor,
High Court, Madras.

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