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*Crl.M.P.No.17158 of 2023
in Crl.A.No.1207 of 2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2023

CORAM:

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

Crl.M.P.No.17158 of 2023

in

Crl.A.No.1207 of 2023

M.Rajendran

... Petitioner

Vs.

State Rep. by:
The Inspector of Police,
All Women Police Station,
Tirupur South, Tirupur.
(Crime No.7/2022)

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence imposed by the learned Sessions Judge, Mahalir Neethi Mandram (Fast Tract Mahila Court), Tirupur in Special S.C.No.105/2022 dated 11.07.2023 and enlarge the petitioner on bail.

For Petitioner : Mr.C.Samivel

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor



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ORDER

The petitioner who is the accused in Spl.S.C.No.105 of 2022 and convicted by the trial court by judgment dated 11.07.2023 and sentenced to three years R.I. and to pay a fine of Rs.1,000/-, in default to undergo three months R.I. for the offence under section 7 r/w 8 of POCSO Act, has filed the present appeal and suspension of sentence.

2. The contention of the petitioner is that the petitioner and PW3/the father of the victim girl were known to each other; they were residing nearby and both of them are masons. The allegation against the petitioner is that on 26.05.2022, when the victim girl was alone at her house, the petitioner is said to have come to her house and removed her undergarment and thereafter committed sexual assault which is not supported by the evidence of PW1/the victim girl. The victim girl submits that she was alone at her house and at that time, the petitioner had removed her undergarment and had pinched her on her back and nothing more. PW2 and PW3 are the



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mother and the father of the PW1/victim girl and their submissions are contrary to each other. PW5 is the Sub Inspectors of Police and PW6 is the Investigating Officer who prepared Rough Sketch Ex.P5 and Observation Mahazar Ex.P3. Investigating Officer conducted investigation. The only allegation against the petitioner is that the petitioner had beaten the minor girl on her back. The trial court impeding sexual intention on the petitioner is not proper, when there is no averments or materials to prove the same. The petitioner was arrested on 27.05.2022 and thereafter he was let out on bail on 04.09.2022 and he had been out on bail during investigation and trial. The trial court on conviction of the petitioner, had suspended the sentence for a period of two months vide Crl.M.P.No.945 of 2023.

3. Learned Additional Public Prosecutor submits that in this case, the victim girl is aged about 4 ½ years. It is not in dispute that the victim girl and petitioner are neighbours. The petitioner and the father of the victim are masons. On 26.05.2022, when the victim girl was alone at her house, taking advantage of the same, finding that the victim was alone, the petitioner whose age is 55 years, had entered into the victim's house and tapped her



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WEB COPY

back by removing her undergarment. The victim girl narrated the same to her parents and thereafter, complaint has been lodged and PW5 registered the case. PW6 Investigating Officer went to the scene of occurrence, recorded the statement of the witnesses and prepared Rough Sketch and Observation Mahazar and thereafter, arrested the petitioner and filed charge sheet, in this case. Before the Trial court, on the side of the prosecution, PW1 to PW6 examined and Ex.P1 to Ex.P5 marked and no material objects marked. On the side of the petitioner/accused, neither any witness examined nor any document marked. On conclusion of the trial, the trial court convicted the petitioner as stated above. He also submitted that the trial court already suspended the conviction of the petitioner.

4. Considering the submissions made on either side. It is seen that the victim girl in her 164 statement stated that when she was alone at her home, the petitioner came and pinched on her back, after removal of her undergarment. On the other hand, the petitioner pinched on the back of the victim girl for only once, which cannot be termed as an act with sexual intention. The submission of the petitioner has force and reason. There are



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arguable points in the appeal. It would take some time for the appeal to be taken for final hearing.

5. Considering the above facts, this court is inclined to grant bail to the petitioner.

6. 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 Additional District & Sessions Judge, FTC-Mahila at Tirupur.

7. 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 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.



*Crl.M.P.No.17158 of 2023
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8. Accordingly, this Miscellaneous Petition is ordered.

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To

1. The Sessions Judge, Mahalir Neethhi Mandram, (Fast Track Court),
Tirupur.

2. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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