



WEB COPY



*Crl.M.P.No.17176 of 2023
in Crl.A.No.1004 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.17176 of 2023
in
Crl.A.No.1004 of 2023

Sabari @ Sabariraj

... Petitioner

Vs.

The Inspector of Police,
All Women Police Station,
Ammamet.
(Crime No.8/2020)

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence imposed in Judgment dated 27.06.2023 passed in Spl.S.C.No.29 of 2022 on the file of the Sessions Judge, Principal POCSO Court, Salem and enlarge the petitioner on bail pending disposal of the appeal.

For Petitioner : Ms.J.Prithivi

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



WEB COPY



*Crl.M.P.No.17176 of 2023
in Crl.A.No.1004 of 2023*

ORDER

The petitioner who is the accused in Spl.S.C.No.29 of 2022, convicted by the trial court by judgment dated 27.06.2023 and sentenced to five years R.I. and to pay a fine of Rs.1,000/-, in default to undergo one year R.I. for the offence under section 450 IPC; to pay a fine of Rs.1,000/-, in default to undergo six months R.I. for the offence under section 342 IPC; to undergo seven years R.I. and to pay a fine of Rs.2,000/-, in default to undergo one year R.I. for the offence under section 9(k) r/w 10 of POCSO Act, against which the present appeal and suspension of sentence.

2. Before the trial court, PW1 to PW7 examined, Ex.P1 to Ex.P15 marked and no material objects marked, on the side of the prosecution. On the side of the petitioner/accused, neither any witness examined, nor any document marked.

3. The brief facts of the case is that PW1/defacto complainant who is the mother of the victim girl is residing at Kannankurichi, Salem along with



*Crl.M.P.No.17176 of 2023
in Crl.A.No.1004 of 2023*

WEB COPY

her daughter and brother. Her daughter was a minor aged 17 years at the time of occurrence. She is not a normal person. At the time of occurrence, the victim was studying in the pre-vocational group in the Mentally Disabled Special School at Kannankurichi. Though she is not a normal person, she is capable to speak and reply. The defacto complainant is running a Fast Food Shop along with her brother. The petitioner/accused is residing at nearby area with his parents studying fourth year B.E. Mechanical Engineering at AVS Engineering College, Salem. The petitioner was aged 22 years at the time of occurrence. The victim used to often go to the defacto complainant's Fast Food Shop and she used to speak with her mother and return home. The defacto complainant's house is located at about 20 feet distance from the Fast food shop. The petitioner used to often come to the defacto complainant's fast food shop and established a friendly relationship with the defacto complainant's daughter. Taking advantage of this, he had entered into the house of the defacto complainant, when the victim was alone and thereafter had committed aggravated penetrative sexual assault on the minor girl. The defacto complainant had noticed the same. On seeing the defacto complainant, the petitioner had run to the



*Crl.M.P.No.17176 of 2023
in Crl.A.No.1004 of 2023*

WEB COPY

terrace and fell down and sustained injury. The defacto complainant lodged a complaint against the petitioner to the PW5, who registered the case. The investigation conducted and on completion of investigation, charge sheet filed before the Trial Court. On conclusion of the trial, the trial court convicted the petitioner as stated above.

4. The contention of the petitioner is that the case projected by the defacto complainant is a concocted story. The specific case of the defacto complainant is that the petitioner had penetrative sexual assault with his daughter, taking advantage of her mental condition and loneliness in her house, which has been proved to be false as could be seen from the evidence of PW4, the doctor who had medically examined the victim girl on 10.02.2020 and collected a vaginal smear and sent it for examination and no sperm found in the vaginal smear and further, there is no injury on the victim girl. The story given by the defacto complainant, has been recorded in the accident register copy/Ex.P4. The Medical Certificate/Ex.P5 and Final opinion/Ex.P7 confirms that there is no penetrative sexual assault as projected by the defacto complainant/PW1. The victim girl was forced by



*Crl.M.P.No.17176 of 2023
in Crl.A.No.1004 of 2023*

her mother and hence, her statement is contrary to the statement given before the police as well as in the court. The petitioner is a student who is studying 4th year B.E. Engineering and within a short period of time, he will complete his study and due to the above facts, his entire future and career would be spoiled. He further submitted that the petitioner and the victim girl belong to different religious faith, which adds fuel and hence false case has been registered against him. The trial court though finds that the defacto complainant had given an exaggerated version, but had convicted the petitioner for sexual assault which is not proper. The petitioner neither committed penetrative sexual assault nor sexual assault on the victim girl.

5. The learned Additional Public Prosecutor submits that in this case, on the complaint of the defacto complainant / the mother of the victim girl, a case has been registered. Thereafter, she was produced before the PW4/Doctor for medical examination. The respondent police went to the scene of occurrence, prepared rough sketch and observation mahazar and registered the case against the petitioner. The petitioner was arrested and produced before the trial judge. The victim girl had given her 164 statement. PW1 had confirmed that the petitioner and the victim girl were together on



*Crl.M.P.No.17176 of 2023
in Crl.A.No.1004 of 2023*

the day of occurrence at odd hours and when the petitioner attempted to flee from the house, he fell down and got injured. The trial court on the evidence of PW1, PW2 and PW4 had found that there is no penetrative sexual assault and there is only sexual assault and convicted the petitioner. He fairly submits that the petitioner is an engineering student studying 4th year and he is also aged 22 years.

6. Considering the submissions on either side, this Court finds that there are arguable points in the appeal. It would take some time for the appeal to be taken for final hearing. This court is inclined to grant bail to the petitioner.

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 learned Judge, Special Court for the Protection of Children from Sexual Offences Act, 2012, Salem.

8. Accordingly, this Miscellaneous Petition is ordered.



WEB COPY



*Crl.M.P.No.17176 of 2023
in Crl.A.No.1004 of 2023*

02.11.2023

nl

To

1. The Judge, Special Court for the Protection of Children from Sexual Offences Act, 2012, Salem.
- 2.The Salem Central Prison.
- 3.The Public Prosecutor,
High Court, Madras.



WEB COPY



*Crl.M.P.No.17176 of 2023
in Crl.A.No.1004 of 2023*

M. NIRMAL KUMAR, J.

nl

**Crl.M.P.No.17176 of 2023
in
Crl.A.No.1004 of 2023**

02.11.2023