



*Crl.M.P.No.18257 of 2023
in Crl.A.No.930 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2023

CORAM:

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

Crl.M.P.No.18257 of 2023
in
Crl.A.No.930 of 2023

G.Arasan

... Petitioner

Vs.

The State rep. by
The Inspector of Police,
AWPS, Mamallapuram,
Kanchipuram District.
Crime No.10 of 2017

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence and release the petitioner on bail in New Spl.S.C.No.159 of 2019 (Old Spl.S.C.No.15 of 2019) on the file of the Special Court for the Exclusive Trial of POCSO Act Cases, Chengalpet convicted vide judgment dated 24.04.2023 pending disposal of the criminal appeal.

For Petitioner : Mr.M.Deivanandam

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER



*Crl.M.P.No.18257 of 2023
in Crl.A.No.930 of 2023*

WEB COPY

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 the Exclusive Trial of POCSO Act Cases, Chengalpet by order dated 24.04.2023 made in New Spl.S.C.No.159 of 2019 (Old Spl.S.C.No.15 of 2019) and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused was convicted by the Trial Court in New Spl.S.C.No.159 of 2019 (Old Spl.S.C.No.15 of 2019) by judgment dated 24.04.2023 for the offence under Sections 366, 354(B) of IPC and Section 9(m) r/w. 10 of Protection of Children from Sexual Offences Act, 2012 [POCSO Act] and sentenced him to undergo five years rigorous imprisonment and to pay a fine of Rs.3,000/-, in default to undergo six months simple imprisonment for the offence under Section 366 IPC, to undergo three years rigorous imprisonment and to pay a fine of Rs.2,000/-, in default to undergo three months simple imprisonment for the offence under Section 354(b) IPC and to undergo five years rigorous imprisonment



*Crl.M.P.No.18257 of 2023
in Crl.A.No.930 of 2023*

and to pay a fine of Rs.5,000/-, in default to undergo one year simple imprisonment for the offence under Section 9(m) r/w. 10 of POCSO Act.

All the sentences to run concurrently. Against which, the present appeal is filed along with suspension of sentence.

3.The petitioner belongs to nomadic tribe who sells beads, bangles and other things. The case projected against the petitioner is that on 22.04.2017 when the victim, who is aged about nine years was playing near her house, at that time the petitioner gave her Rs.10/- to buy Rasna juice packet and beetles. She bought the juice packet, returned Rs.5/- to the petitioner and informed him that beetles were not available. At that time, the petitioner is said to have pulled her, taken her to the house of P.W.5, undressed her and made improper touch on her private parts. Thereafter, she raised alarm, hearing her cry P.W.4 came to her rescue, the petitioner was caught and handed over to the respondent police. On receipt of the complaint, P.W.11 took up the investigation, examined the victim girl/P.W.2, her parents/P.W.1 and P.W.3/father and mother of the victim girl and recorded the statement of the eye witness/PW.4 and P.W.5, a



*Crl.M.P.No.18257 of 2023
in Crl.A.No.930 of 2023*

WEB COPY

neighbour. On the arrest of the accused, he had given a confession in the presence of P.W.6 and P.W.7. Thereafter, the petitioner/accused was remanded to judicial custody. P.W.8 who is the Headmistress of the Government School where the victim girl is studying confirmed the age of the victim girl. P.W.9 is the Doctor who examined the petitioner/accused and had given the Potency Certificate/Ex.P6. P.W.10 is the Doctor who examined the victim and had given a medical report/Ex.P7.

4.Before the Trial Court, on the side of the prosecution P.W.1 to P.W.11 were examined and Ex.P1 to Ex.P11 were marked. On the side of the petitioner/accused, no witness was examined and no documents were marked. On conclusion of the trial, the Trial Court convicted the petitioner as stated above.

5.The contention of the learned counsel for the petitioner is that the petitioner was selling beads, bangles in the villages and also regularly at Mahabalipuram seashore to sell those articles. He would submit that the petitioner had a business rivalry and motive with P.W.4 who was also doing



*Crl.M.P.No.18257 of 2023
in Crl.A.No.930 of 2023*

WEB COPY

such business in the seashore and for this reason, the petitioner was falsely implicated. At the outset, he submitted that except for cross examination of P.W.2 and P.W.11/Investigating Officer, no other witnesses were cross examined in detail. In fact P.W.4, the only eye witness if cross examined in detail the petitioner could have very well putforth his defence. Unfortunately the legal aid counsel who conducted the case for hte petitioner not conducted the case in the manner it ought to have been done, for which the petitioner is now suffering. He further submitted that P.W.10/Doctor who examined the victim girl found no traces of mark or any abnormality in the victim girl. The petitioner had no reason to make such move as alleged against him. The petitioner himself belong to Gypsy a nomadic tribe and in their community, though the females are nomadics but their code of conduct for the females is of high standard. He further submitted that in the 164 Statement/Ex.P2, the victim girl in her earlier statement had stated that she was pulled by hands and nothing more but thereafter exaggerated version was given by the victim girl and others. But unfortunately they have not been cross examined detail in this aspect.

6.Learned Additional Public Prosecutor submits that the victim girl is



*Crl.M.P.No.18257 of 2023
in Crl.A.No.930 of 2023*

aged nine years old who had no reason to falsely implicate the petitioner.

He would submit that the petitioner had given some moeny to buy juice for him and thereafter, he pulled her by hand which was clearly spoken to by P.W.2/victim girl and in Ex.P2/164 statement it is recorded. P.W.4 is the eye witness who has seen the victim girl's plight and also heard her cry. Thereafter, P.W.4 went to the rescue, caught the petitioner and handed over to the Police. He fairly submitted that the legal aid counsel who conducted the case in the Trial Court had not cross examined majority of witnesses.

7.Considering the submissions made and on perusal of the materials, it is seen that P.W.2 in her earliest statement stated that she was pulled by hand by the petitioner which was seen by P.W.4 and thereafter, the petitioner was caught, beaten and handed over to the respondent police. P.W.10/Doctor who examined the victim girl given a report that there are no traces of any mark or any abnormality on the body of the victim girl. In view of the same, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.

8.Accordingly, the Substantive Sentence of Imprisonment imposed on



*Crl.M.P.No.18257 of 2023
in Crl.A.No.930 of 2023*

WEB COPY

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 Sessions Judge, Special Court for the Exclusive Trial of POCSO Act Cases, Chengalpet.

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.

10.Accordingly, this Miscellaneous Petition is ordered.

20.11.2023

cse

Note: Issue order copy on 21.11.2023

M. NIRMAL KUMAR, J.



*Crl.M.P.No.18257 of 2023
in Crl.A.No.930 of 2023*

cse

WEB COPY

To

- 1.The Inspector of Police,
AWPS, Mamallapuram,
Kanchipuram District.
- 2.The Sessions Judge,
Special Court for the Exclusive Trial
of POCSO Act Cases, Chengalpet
- 3.The Superintendent,
Central Prison, Puzhal, Chennai – 600 066.
- 4.The Public Prosecutor,
High Court, Madras.

**Crl.M.P.No.18257 of 2023
in Crl.A.No.930 of 2023**

20.11.2023