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*Crl.M.P.No.17676 of 2023
in Crl.A.No.1256 of 2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM:

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

Crl.M.P.No.17676 of 2023
in
Crl.A.No.1256 of 2023

Sanoof ... Petitioner

Vs.

State Rep. by:
The Inspector of Police,
All Women Police Station,
Perur, Coimbatore
(Crime No.9 of 2020) ... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence passed against the petitioner/Appellant in Spl C.C.No.90 of 2020 dated 11.10.2023 by the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore and enlarge the petitioner on bail pending disposal of the appeal.

For Petitioner : Mr.P.Nagaraju

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



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ORDER

The petitioner who is the accused in Spl.C.C.No.90 of 2020 and convicted by the trial court by judgment dated 11.10.2023 and sentenced to three years R.I. and to pay a fine of Rs.5,000/-, in default to undergo two months S.I. for the offence under section 11(i) r/w 12 of POCSO Act, has filed the present appeal and suspension of sentence.

2. The gist of the case is the victim is aged about 5 years, at the time of occurrence and her date of birth is 14.08.2015. The petitioner resides next door to the house of the victim girl. The parents of the victim girl are labourers and hence, they used to attend the work during day time. The petitioner/accused was doing centering work and he was staying alone. On 13.09.2020, the mother of the victim girl sent the victim to buy flowers and while passing through the house of the petitioner who was standing in front of the house called the victim, in the pretext of giving her papaya fruit. At that time, he took the victim girl into the house and unzipped his pants and exposed his private part to the victim girl and thereby, sexually harassed.



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During trial, PW1 to PW12 examined and Ex.P1 to Ex.P8 marked and on the side of the accused, one Antony was examined as DW1 and no documents marked. Ex.C1/164 statement marked as Court exhibit.

3. The contention of the petitioner is that the petitioner has been falsely implicated in this case. There are contradictions in the statement of the victim and the other witnesses as regards the manner in which the petitioner committed the offence. As per Ex.C1, the victim states that on her birthday, she was distributing the cakes and at that time, she went to the house of the petitioner to give the cake and at that time, the offence is said to have been taken place. On the contrary, from the evidence of the other witnesses including the mother of the victim is that the victim and her mother were on the way for purchasing flowers and at that time, the occurrence is said to have been taken place. Further, the arrest is also highly doubtful. Though there is a contradiction about the manner in which the incident had taken place, the same was not considered in its proper perspective and hence, prayed for suspension of sentence.



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4. Learned Additional Public Prosecutor submitted that in this case, PW1 is the father of the victim, PW6 is the mother of the victim, PW5 is the victim and PW2 to PW4 are the neighbours who had corroborated the evidence of each other. The trial court on the evidence of witnesses and materials produced had rightly convicted the petitioner as stated above. He submitted that the petitioner was convicted for three years and the trial court suspended his sentence till today (i.e., on 09.11.2023) and opposed for grant of suspension of sentence.

5. Considered the submissions made on either side and perused the materials available on record. It is seen that there are contradictions between the statement of the victim as well as the mother with regard to the manner by which the victim went to the house of the petitioner and further what had happened inside the house. It is a mystery in view of the contradictory statement. The arrest of the petitioner is also doubtful. The trial court had already suspended the sentence. In view fo the same, this Court is inclined to suspend the sentence of the petitioner.

6. Accordingly, the Substantive Sentence of Imprisonment imposed on



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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 Principal Special Court For Exclusive Trial of Cases Under POCSO Act, Coimbatore.

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.

8. Accordingly, this Miscellaneous Petition is ordered.

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To

1. The Principal Special Court For Exclusive Trial of Cases Under POCSO Act, Coimbatore.
2. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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