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Crl.M.P.No.18576 of 2023 in
Crl.A.No.1338 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2023

CORAM:

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

Crl.M.P.No.18576 of 2023 in
Crl.A.No.1338 of 2023

Rajasekaran

... Petitioner

Vs.

State by the Inspector of Police,
All Women Police Station,
Ulundurpet, Villupuram district.
(Crime No.12 of 2021)

... Respondent

PRAYER: Criminal Revision filed under Section 389(1) of Cr.P.C to suspend the sentence imposed by the learned Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Villupuram in Special S.C.No.132 of 2021 dated 14.11.2023 and enlarges the petitioner on bail pending disposal of the appeal.

For Petitioner : Mr.V.Parthiban

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



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ORDER

The petitioner/accused in Spl.S.C.No.132 of 2021 was convicted by the trial court by judgment dated 04.11.2023 and sentenced him to undergo three years R.I. and to pay a fine of Rs.1,000/-, in default to undergo one month S.I. for the offence under section 366 IPC, and to undergo three years R.I. and to pay a fine of Rs.10,000/-, in default to undergo three months S.I. for the offence under section 11(i) of POCSO Act, against which the present appeal and suspension of sentence.

2. The case of the prosecution is that there are two victims in this case; the first victim hails from Eraiyur Village and was studying eighth standard at that time of occurrence. The petitioner was constructing a house near her house. All the schools closed, due to Corona Pandemic and hence, victims PW1 and PW2 were playing with their friends near the house of the petitioner. The petitioner being a retired military man used to visit the construction at that time called the children to first floor of the building, saying that he will show Magic and mimicry. On 16.06.2021, he had called



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the first victim PW1 and the second victim PW2 to the first floor under the guise of teaching magic and mimicry. When they came, he undressed himself, stood nude and asked the PW1 and PW2 to do the same. However, they refused to do so and ran down. PW1 informed her mother PW3 who lodged the complaint and thereafter, police examined the victims, collected documents and filed final report. During the trial, PW1 to PW10 examined and Ex.P1 to Ex.P15 marked. The trial court on the evidence and the materials produced, convicted the petitioner as stated above.

3. The contention of the petitioner is that the case projected by the prosecution is based on the complaint of PW3 that during the period 16.06.2021 and 17.06.2021, the petitioner forcibly took the victims PW1 and PW2, to the first floor of the house and there in the guise of showing magic and mimicry, he had committed sexual assault on the victims. But in this case, PW3 and PW9 who are the mother and father of the victim PW1, not supported the case of the prosecution. Likewise, the second victim PW2, his uncle PW4 and mother PW6 not supported the case of the prosecution. Though the case of the prosecution is that the petitioner, committed sexual



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assault on the victims by forcibly taking them to the first floor of the house while they were playing together, the evidence of the second victim/PW2 does not support the case of the prosecution which is contra to the evidence of the first victim/PW1. The lower court finding that none of the witnesses supported the case of the prosecution, except PW1 and based on PW1 evidence only, convicted the petitioner. He further submitted that the sentence against the petitioner suspended by the lower court.

4. Learned Additional Public Prosecutor on the other hand submitted that the evidence of the first victim girl/PW1 is in confirmity to had supported the case of the prosecution, her 164 statement as well as her evidence before the lower court are consistent. The petitioner being a retired military man, forcibly took the victims PW1 and PW2 to the first floor of the on going constructing house, where under the guise of showing magic, he committed sexual assault. Thereafter, PW1 and PW2 ran down. PW1 informed the said incidents to her parents PW3 and PW9. PW3 lodged a complaint immediately, without any delay. The child witness PW1 clearly stated about the petitioner's act. The trial court rightly convicted the



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petitioner. Learned Additional Public Prosecutor fairly submitted that the trial court had granted suspension of sentence to the petitioner.

5. Considering the submissions made on either side and the materials available, except PW1, no independent witness supported the prosecution case, even the other victim PW2 not supported the case. There is no corroboration to the evidence of PW1. On the other hand, contradictions are found. This Court finds force in the petitioner's submission and there are arguable points.

6. In view of the same, this Court is inclined to grant suspension of sentence.

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 Sessions



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Judge, Special Court for exclusive trial of cases under POCSO Act,
Villupuram.

8. Further, the petitioner shall appear before the Trial Court on the first working day of every English Calender month at 10.30 a.m. until the disposal of the revision case 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.

9. Accordingly, Crl.M.P.No.18576 of 2023 is ordered.

07.12.2023

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To

1.The Inspector of Police,
All Women Police Station,
Ulundurpet, Villupuram district.

2.The Sessions Judge, Special Court for exclusive trial of cases under
POCSO Act, Villupuram

3.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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