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Crl.M.P.No.11 of 2023
in Crl.A.No.95 of 2022

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S.S. SUNDAR, J.
and
SUNDER MOHAN, J.

[Order of the Court was made by **S.S. SUNDAR, J.**]

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the Principal Special Court for POCSO Act Cases, Salem, in Old Spl.S.C.No.60 of 2017, New Spl.S.C.No.58 of 2019, by judgment dated 30.11.2021 and to enlarge the petitioner/sole accused on bail pending disposal of the above Criminal Appeal.

2.The case of the prosecution is that, on 28.08.2017 at about 04.00 hours, while the victim girl, who is a minor aged 9 years studying 4th Std., was alone in her house, the accused, who is the uncle of the girl, knowing very well that the victim girl is a minor, came in a Two Wheeler TVS Star City Motor Bike bearing Registration No.TN-54-P-3220 to victim girl's house and by promising to give chocolates to her, took her to a lonely place called Matheswarankaadu, abused the victim girl sexually



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and also threatened her not to disclose the matter to anyone. Hence, the case.

3.The case was tried by the learned Principal Special Judge for POCSO Act Cases, Salem, in Old Spl.S.C.No.60 of 2017, New Spl.S.C.No.58 of 2019, and ultimately, the petitioner/accused was convicted and sentenced as follows :

<i>Conviction</i>	<i>Sentence</i>
Section 363 IPC	Rigorous Imprisonment for a period of 3 years and to pay a fine of Rs.10,000/-, in default, to undergo Simple Imprisonment for 3 months
Sections 5(m), 5(n) r/w.6 of POCSO Act	Life Imprisonment and to pay a fine of Rs.20,000/-, in default, to undergo Simple Imprisonment for six months
Section 506(i) IPC	Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for 3 months
The sentences were ordered to run concurrently	

4.Challenging the above conviction and sentence, the petitioner/accused has filed the above Criminal Appeal and he is seeking suspension of sentence and bail in the present miscellaneous petition.



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5.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

6.Though the learned counsel for the petitioner states that there is strong motive for the *de facto* complainant to give a false compliant as against the petitioner, this Court is unable to find a strong motive for giving a false complaint as against the petitioner. The evidence of P.W.1 (victim girl) is natural and it is corroborated by the evidence of other witnesses. Though P.W.5, one of the witnesses, had given evidence contrary to what he had stated in his chief-examination, the other circumstances and evidence cannot be disregarded.

7.Though the learned counsel for the petitioner pointed out the discrepancy between the evidence of the victim girl recorded before the Court and her statement recorded under Section 164 Cr.P.C., this Court is of the view that the question as to whether those are material contradictions, has to be appreciated at the final hearing of the appeal.



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8.Learned counsel for the petitioner mainly relied upon the evidence of the Doctor who has stated in the cross-examination that her report was on the basis of the information given by the mother of the victim girl and the Police, whereas, she has given evidence during chief-examination that the statement recorded in her report was on the basis of the information furnished by the victim girl herself. We are unable to appreciate the said discrepancy at this stage, in the light of the evidence of victim, which is cogent.

9.Hence, we do not find a *prima facie* case to suspend the sentence imposed on the petitioner. Therefore, this Criminal Miscellaneous Petition is dismissed.

(S.S.S.R., J.) (S.M., J.)
06.11.2023

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