



Crl.M.P.No.474 of 2024 in Crl.A.No.66 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.474 of 2024
in Crl.A.No.66 of 2024

Saravanan,
S/o.Palani.

... Petitioner

Vs.

State by the Inspector of Police,
All Women Police Station,
Thirupathur,
Thirupathur District.
(Crime No.02/2022).

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) r/w 439 of Cr.P.C., to suspend the sentenced imposed against the petitioner in Spl.S.C.No.105/2022 on the file of the learned Court of the Special Judge for Exclusive Trial of cases under POCSO Act 2012, Vellore, Vellore District dated 25.09.2023 and enlarge the petitioner on bail pending disposal of the said Crl.A.No. of 2023 on the file of this Court.

For Petitioner	:	Mr.E.Kannadasan
For Respondent	:	Mr.C.E.Pratap, Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in judgment, dated 25.09.2023 in Special



S.C.No.105 of 2022 passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases Under POCSO Act, 2012, Vellore.

2.The petitioner was convicted for offence under Sections 5(l), 5(m) and 5(n) r/w 6 of the Protection of Children from Sexual Offence Act, 2012 and sentenced to undergo Rigorous Imprisonment of twenty years and to pay a fine of Rs.5,000/-, in default to undergo three months Simple Imprisonment. The petitioner is acquitted from the charges under Section 506(i) of IPC and Sections 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2015 (as amended).

3.The case of the prosecution is that on 01.03.2022, the defacto complainant (PW1)/mother of the victim girl lodged a complaint to the respondent Police that she had been living with the petitioner along with her two children viz., the victim girl (PW2) and one male child. She was working as English Teacher at Panchayat Union Middle School. The victim girl was studying 8th std at Government Higher Secondary School. On 11.02.2022, when the victim girl was sleeping in the hall, the petitioner lifted her and inserted his fingers into her vagina and pressed her breasts of



her daughter/the victim girl. On 12.02.2022, the victim girl was weeping and informed her about the acts of the petitioner. When the defacto complainant questioned him about his acts, he denied the same initially and later admitted the same and threatened her that if she discloses the same he would cut her and her family members in pieces. On receipt of the complaint (Ex.P1), the respondent Police registered FIR (Ex.P11) in Crime No.2 of 2022 for offence under Sections 5(l), 5(m) & 5(n) r/w 6 of POCSO Act and Section 506(i) of IPC and Section 3(2)(va) of SC/St (Prevention of Atrocities) Act, 2015 (as amended). Thereafter, the Deputy Superintendent of Police (PW13) took up investigation, visited the scene of occurrence, prepared Observation Mahazar (Ex.P3), Rough Sketch (Ex.P15) in presence of witnesses, examined the witnesses present in the scene of occurrence. On 01.03.2022, at about 10.00 a.m., PW13 arrested the petitioner, recorded his confession statement and remanded him to judicial custody and thereafter, produced the victim girl and the petitioner for medical examination in Government Hospital, Tirupathur, received medical reports (Ex.P9, P10 & P12). On completion of investigation by collecting evidence and material, charge sheet filed before the trial Court.



4. During trial, on the side of the prosecution, 13 witnesses examined as PW1 to PW13 and 17 documents marked as Exs.P1 to P17. On the side of the defence, no witness examined and no document marked.

5. The learned counsel for the petitioner submitted that the petitioner is the father of the victim girl (PW2). The case against the petitioner is that the petitioner took the victim girl to bedroom when the victim girl was sleeping outside along with her brother. Thereafter, he made improper touch. The petitioner forced her to sleep along with him, placed his hands on her breast and on her private part. The victim girl pushed aside the petitioner and informed that she was not in good health and suffering from fever. Despite the same, he continued the sexual assault and thereafter, she informed the incident to her brother Sivasabari and to her mother (PW1). This occurrence had taken place on 11.02.2022. In this case, the complaint was lodged on 01.03.2022 with delay of nearly 18 days, no reason given for the delay. The specific case of the petitioner is that the mother of the victim girl was in illegal relationship with one Raman, Ex-Military man which was objected by the petitioner. This fact not completely denied by PW1 and PW2. PW1 admits that she knows Raman and she used to go along with him with the



children and she had been in friendly terms with him. PW2, the victim girl admits that she saw the picture of Raman lying in the lap of her mother. The victim girl accompanied her mother and been with him to various places. He further submitted that the petitioner objected the said relationship, due to which, there was quarrel and dispute between them. PW13/Investigating Officer stated that he has not conducted any investigation with regard to the same. The Investigating Officer in all fairness when the allegation is made against the husband by his wife alleging that the child was subjected to sexual assault, it is his duty to verify whether cordial relationship exists and what are the attendant circumstances. In this case, the Investigating Officer not took any such steps. Further, the victim girl admits that she used to side with her mother. In unequal terms, she stated that she always supports her mother. The brother of the victim girl namely Sivasabari not examined in this case to confirm that on 11.02.2022, the victim girl sleeping besides him forcibly taken by the petitioner and the victim girl informing the assault committed by the petitioner. The Doctor (PW11) examined the victim girl and found nothing unusual on the victim's body. Thus, the petitioner has been falsely implicated due to immoral conduct of PW1 which was questioned and opposed by the petitioner. Taking advantage of the



closeness with the victim girl, the defacto complainant foisted a false case against him. The trial Court failed to consider all attendant circumstances and the petitioner probablized his defence by way of cross examination.

6.The learned Government Advocate (Crl. Side) appearing on behalf of the respondent Police filed counter stating that the victim girl (PW2) aged about 12 years is the minor daughter of the defacto complainant (PW1). The defacto complainant is working as a teacher. The victim girl was studying 8th standard in Government Higher Secondary School. The petitioner is the husband of the defacto complainant and father of the victim girl. The defacto complainant belongs to the Hindu Adi Dravida Community and the petitioner belongs to Vanniyar Community. In the year 2003, the petitioner performed intercaste marriage with the defacto complainant and they have two children viz,, victim girl and one male child. About 12 years ago, prior to this complaint, the victim girl was 11 years old. When the victim girl was sleeping in the house, the petitioner went near to her and inserted his finger into the Vagina of the girl and pressed her breast and caused sexual assault upon her. Similarly, two weeks prior to the complaint, when the victim girl was sleeping in the hall of her house, the petitioner lie down near her and



inserted his finger into the vagina of the victim girl and caused sexual assault upon her. The victim girl reported the same to her mother/defacto complainant. The mother of the victim girl questioned and scolded her husband the petitioner, in turn the petitioner made criminal intimidation.

7.He further submitted that based on the above complaint, a case was registered by the respondent Police in Crime No.2 of 2022 (Ex.P11) for offence under Sections 5(l), 5(m), 5(n) of the POCSO Act, 2012 on 01.03.2022 and submitted the same before the Deputy Superintendent of Police and he took up the case for further investigation. During the course of investigation, the Investigating Officer went to the scene of occurrence, drew rough sketch (Ex.P15) and prepared observation mahazar (Ex.P3) in the presence of witnesses and examined the witnesses and recorded their statements. On 01.03.2022, at about 11.00 hours, the Investigating Officer arrested the petitioner and recorded his confession statement and produced him before the concenterd Judge for remand. After completion of investigation, based on the witnesses statement, the Investigation Officer altered the offences under section from under Sections 5(l), 5(m), 5(n) of the POCSO Act 2012 @ to Sections 5(l), 5(m), 5(n) of the POCSO Act 2012



and Section 506(i) IPC and Section 3(2)(va) of SC/ST (POA) Act 2015.

After completion of investigation, charge sheet filed before the trial Court.

During trial, on the side of the prosecution, thirteen witnesses examined as PW1 to PW13 and seventeen documents marked as Exs.P1 to P17. On the basis of the evidence and materials produced by the prosecution, the trial Court rightly convicted the petitioner. Hence, prays for dismissal.

8.Considering the submissions and on perusal of the materials, it is seen that the petitioner is the father of the victim girl and estranged husband of PW1. The relationship between PW1 and the petitioner is not cordial due to her relationship with Raman which is not seriously disputed. Who is this Raman and how come the friendship developed and for what reason, PW1 moving closely with Raman, is not known, no investigation on that aspect conducted. No explanation given by PW1. The petitioner's wife and Raman were moving closely to various places against the objection of the petitioner. The victim girl confirmed the same stating that she saw Raman and PW1 in close relationship. Naturally any husband would oppose such a relationship of his wife with third person. The victim girl admits that she usually supports her mother. In view of the same, the tutelage is possible. The



Investigating officer in such kind of complaint ought to have considered the attendant circumstances and ought to have examined neighbours and others which is not done in this case. In view of the same, this Court finds that the petitioner had probablized his defence and there are exaggeration in the evidence of the prosecution witnesses which needs re-appreciation and reconsideration.

9.In view of the above, this Court is inclined to suspend the sentence of the petitioner till the disposal of the main criminal appeal. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the criminal 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 trial Court.

10.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 criminal 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



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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.

11.Accordingly, this Miscellaneous Petition is ordered.

15.02.2024

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To

WEB COPY

- 1.The Special Court for Exclusive Trial of Cases Under POCSO Act, 2012,
Vellore.
- 2.The All Women Police Station,
Thirupathur,
Thirupathur District.
- 3.The Superintendent of Police,
Central Prison, Vellore.
- 4.The Public Prosecutor,
High Court, Madras.

Note: Issue Order Copy on 16.02.2024.



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M. NIRMAL KUMAR., J.

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