



Crl.MP.No.1697/2024 in Crl.A.No.338/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.07.2024

PRONOUNCED ON : 16.07.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.1697/2024
in Crl.A.No.338/2021

M.Manibharathi

.. Petitioner/sole accused

Versus

State by
Inspector of Police,
All Women Police Station,
Nagapattinam District.
(Cr.No.02/2015)

.. Respondent/Complainant

Prayer:-Criminal Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence imposed on the petitioner in S.C.No.114 of 2015, on the file of the learned Sessions Judge, Special Court under POCSO Act, Nagapattinam, by judgment dated 27.04.2021, till the disposal of the above mentioned appeal.

For Petitioner : Mr.P.Muthamizh Selvakumar
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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For Victim : Mr.Perarasu
Legal aid counsel

ORDER

[Order of the Court was delivered by **SUNDER MOHAN, J**]

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner vide judgment and order dated 27.04.2021 passed in S.C.No.114 of 2015 on the file of the learned Sessions Judge, Special Court under POCSO Act, Nagapattinam and to enlarge the petitioner on bail pending disposal of the appeal.

2. The petitioner, who is the sole accused in the above Sessions Case, was convicted for the offence under Section 4 r/w 3 (a) of the POCSO Act, Section 3(2)(v) of the SC/ST (POA) Act, 1989 and Section 506(ii) of the IPC and sentenced as follows:

Offence under Section	Sentence imposed
4 r/w 3 (a) of the POCSO Act	To undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for two years.
3(2)(v) of the SC/ST (POA) Act, 1989	To undergo life imprisonment and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for two years.
506 (ii) of the IPC	To undergo rigorous imprisonment for seven years.



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The sentences were directed to run concurrently.

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

4. Heard Mr.P.Muthamizh Selvakumar, the learned counsel for the petitioner/sole accused and Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor appearing for the respondent/State.

5. It is the case of the prosecution that on 17.03.2015, at about 3.00 p.m., with an intention to commit penetrative sexual assault, the petitioner/accused took the victim forcibly to his house and committed penetrative sexual assault; that thereafter, warned her not to disclose the same to her family members; and that on the same day, at about 6.30 p.m., he took the victim again to a secluded place near a canal and committed repeated penetrative sexual assaults.

6.(i) Mr.P.Muthamizh Selvakumar, the learned counsel appearing for the petitioner/accused, submitted that the petitioner is in custody from



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27.04.2021. It is the defence case that the petitioner and the victim had a love affair; that since the family members had come to know of it, they had threatened the victim to make a complaint; that in any case, the victim's evidence would suggest that the petitioner/accused had committed penetrative sexual assault once; and that the petitioner/accused had been in custody for almost half of the minimum sentence prescribed for the offence under Section 4 of the POCSO Act. Hence, he prayed for the suspension of sentence.

7. Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor, *per contra*, submitted that there is evidence to show that the victim was forcibly taken by the petitioner/accused and subjected to repeated penetrative sexual assaults and the trial Court was right in convicting the petitioner/accused for the offences under Section 4 r/w 3 (a) of the POCSO Act, Section 3(2)(v) of the SC/ST (POA) Act, 1989 and Section 506(ii) of the IPC. Hence, he prayed for the dismissal of the petition for suspension of sentence.

8. Since the victim belonged to the Scheduled Caste, we directed the learned Additional Public Prosecutor to give information to the victim about



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the petition for suspension of sentence filed by the petitioner/accused.

9. Though, the victim was served, none had entered appearance and therefore, we had appointed Mr.Perarasu, as legal aid counsel to represent the victim.

10. Mr.Perarasu, learned counsel appearing for the victim, reiterated the submissions made by the learned Additional Public Prosecutor and prayed for dismissal of the petition for suspension of sentence.

11. We have carefully considered the rival submissions and perused the records.

12. Though the petitioner was charged for the offence under Section 6 r/w 5 (l) of the POCSO Act, the trial Court acquitted the petitioner under the said charge and convicted the petitioner for the offence under Section 4 r/w 3 (a) of the POCSO Act. The petitioner was 21 years old and the victim was 16 years, at the time of the occurrence.



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13. Considering the nature of the evidence, we are of the view that the defence case that the victim and petitioner were known to each other, cannot be ruled out. However, that does not absolve him of the offence under the POCSO Act. The question as to whether the victim can be believed, requires consideration at the time of the final hearing of the appeal. In any case, even if the evidence of the victim is believed, the other circumstances suggest that there are grounds for awarding minimum sentence. The appellant is in custody since 27.04.2021 i.e., for about 3 years and 3 months, which is close to half of the minimum sentence.

14. Therefore, considering the above, the nature of the evidence , the period of incarceration and the fact that the appeal is not likely to be taken up in the near future, we are inclined to grant the relief of suspension of sentence to the petitioner herein.

15. Accordingly, this criminal miscellaneous petition stands **allowed**



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and the sentence imposed on the petitioner/sole accused is suspended on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two independent sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Special Court under POCSO Act, Nagapattinam;
- (ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity; and
- (iii) The petitioner shall appear before the trial Court on the first working day of every 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 any 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.



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(iv) The Tamil Nadu State Legal Services Authority is directed to pay a sum of Rs.10,000/-(Rupees Ten Thousand Only) to Mr.Perarasu, Legal aid counsel.

[M.S.R.,J.] [S.M.,J.]
16.07.2024

ars

Issue order copy by 16.07.2024

Upload the order copy forthwith.

Internet: Yes

Copy to:

1.The Sessions Judge,
Special Court under POCSO Act,
Nagapattinam.

2.The Inspector of Police,
All Women Police Station,
Nagapattinam District.

3.The Superintendent of Prison,
Central Prison, Cuddalore.

4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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M.S.RAMESH, J

and

SUNDER MOHAN, J

ars/dk

Pre-delivery order in
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in Crl.A.No.338/2021

Dated: 16.07.2024