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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.No.1408 of 2024
in Crl.A.No.127 of 2024

Ashok @ Manivannan ... Petitioner

Vs.

The State rep. by the
Inspector of Police,
All Women Police Station,
Kottakuppam,
Villupuram. ... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Code of Criminal Procedure, to suspend the sentence imposed in Spl.S.C.No.65 of 2023, dated 04.09.2023 on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Villupuram and enlarge the petitioner/appellant/accused on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.R.Ganesha Moorthy

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor

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ORDER

This petition has been filed to suspend the sentence imposed on the petitioner in Spl.S.C.No.65 of 2023, dated 04.09.2023 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Villupuram and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

2. The petitioner has been convicted by the Trial Court in Spl.S.C.No.65 of 2023 for the offences under Sections 342 IPC, Section 9(m) r/w.10 of POCSO Act and sentenced him to undergo Rigorous imprisonment for 2 months and to pay a fine of Rs.1,000/- in default to undergo Simple Imprisonment for two weeks for the offence under Section 342 IPC and to undergo Rigorous imprisonment for 5 years and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for 3 months for offence under Section 9(m) r/w.10 of POCSO Act. Challenging the same, the petitioner preferred an appeal before this Court and seeks suspension of sentence.

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3. The case of the prosecution is that the petitioner's sister was conducting tuition classes and the school going children would come to attend the tuition. On 20.12.2021, her sister had gone out for some work, at that time taking advantage of the sister's absence, the petitioner called the victim to his room in the upstairs and asked her to search his book. He has lifted her and she made a search, he had made her to lie down in the cot and by lifting her shirt and sucked her breast, thereby causing sexual assault. Thereafter, the victim informed to her mother and a case has been registered.

4. In order to prove the case of the prosecution, the prosecution examined 6 witnesses and marked 9 exhibits and no material objects have been marked. On the defence side, no witness was examined and no exhibits were marked.

5. In this case, the victim has been examined as PW.1 and the victim says that she had gone to the first floor at the request of the petitioner to search for a note book and in her statement, she has stated that after the

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alleged act of the petitioner, she came down and continued to attend tuition, which defys the normal conduct. He further submitted that the victim not taken to doctor for medical examination. Only after two days of the alleged occurrence, the parents lodged the complaint. The petitioner has completed his Diploma in EEE and since unable to get proper employment, he was engaged in drawing of tattoos in Chennai. The petitioner had not committed any act of sexual assault.

6. The learned counsel for the petitioner submitted that the petitioner and PW.2-father of the defacto complainant had some dispute and that the petitioner has been falsely implicated in this case. The petitioner has stated that he was aged about 21 years at the time of the alleged occurrence. The victim girl continued with the tuition after the assault. At that time she had not made any complaint to the tuition teacher or to any others. Thereafter, her conduct was normal. The complaint has been lodged after two days of the alleged occurrence.

7. The learned Public Prosecutor submitted that on a complaint lodged

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by the defacto complainant stating that the case of the prosecution is that on 22.12.2021 at about 21.30 hours the defacto complainant namely Tr.Manimaran, lodged a complaint before the respondent police by stating that h e is residing at No.17 Mariyamman Koil Street, Sodhanaikuppam, Kottakuppam along with his family. He further states that his daughter/victim child, aged about 9 years, who was born on 14.03.2013, who was put in for tuition with a teacher by name Sakthi, who was none other than the sister of accused and on 20.12.2021 at about 06.00 pm while the victim child was attending tuition at the house of the accused and when the tuition teacher was out of the house, the accused in the pretext of taking a note, took the victim child to the upstairs and lifted her to the shelf searching for books and he had made her to lie down in the cot and by lifting her upper garment had sucked her breast with his mouth thereby causing sexual assault. Hence, the complaint.

7.1. It is submitted that based on the above complaint, a case was registered in Kottakuppam AWPS in Crime No.25 of 2021 U/s.9(m) r/w 10 of POCSO Act, 2012 against the accused on 22.12.2021 at about 21.30

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hours by Tmt.S.REvathi, the then Inspector of Police and she taken up for further investigation.

7.2. It is submitted that during the course of investigation, the then Inspector of Police have went to the scene of occurrence, prepared observation mahazar, drew the rough sketch in the presence of witnesses and also examined the witnesses and recorded their statements.

7.3 It is submitted that during the course of investigation, on 23.12.2021 the then Inspector of Police have arrested the accused and obtained his confession statement and then he was produced before the Judicial Magistrate Court, Vanur and remanded to judicial custody.

7.4. It is submitted that after completion of investigation, on 25.01.2022, the then Inspector of Police has altered the section of this case into u/s.342 IPC and 9(m) r/w 10 of POCSO Act and Sec.4 of TNPHW Act and on 17.02.2022, she have filed a charge sheet against the accused before the Sessions Judge, Special Court for Exclusive Trial of Cases under

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POCSO Act, Villupuram and the same was taken on file vide Spl.S.C.No.65/2022.

7.5. It is submitted that the trial court framed charges against the accused. During trial, the prosecution has examined 6 witnesses and marked 9 exhibits to prove the case.

7.6. PROSECUTION SIDE WITNESSES:-

P.W.1	Child Victim	Deposed that incident happened to her and her 164 Cr.P.C statement was recorded [Ex.P1]
P.W.2	Tr.Manimaran/De-facto Complainant	Deposed that incident happened to his dauthger and lodged a complaint before the respondent police [Ex.P2]
P.W.3	Tmt.Vanitha/Mother of the victim child	Corroborated the same version of PW2
P.W.4	Tr.Ashok	Attested in observation mahazar [Ex.P4]
P.W.5	Tmt.Thamizharasi	Deposed that she heard the occurrence through PW3
P.W.6	Tmt.Revathi/Inspector of Police	Deposed that she received complaint from P.W2 and registered in Kottakuppam AWPS, Crime No.25 of 2021. U/s 9(m) r/w 10 of POCSO Act, 2012 and she taken up for enquiry. She went to the scene of occurrence, prepared observation mahazar, drew the rough sketch in the presence of witnesses and examined the witnesses, recorded their statements. Then she have arrested the accused and produced before the concerned Court and remanded to judicial custody. After complete

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		the investigation she has altered the Section and filed a charge sheet before the competent court in accordance with law.

7.7. It is submitted that after conclusion of due trial, the trial court by its judgment in Spl.S.C.No.65 of 2022 dated 04.09.2023 on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act Villupuram and convict the Appellant/Accused and sentenced him as follows:

U/s.342 of IPC	Sentenced him to undergo R.I for 2 months and to pay fine of Rs.1000/- i/d to undergo SI for 2 weeks
U/s.10 of POCSO Act	Sentenced him to undergo RI for 5 years and imposed fine of Rs.10,000/- i/d to undergo S.I. for 3 months

Hence, prays to dismiss the petition.

8. Considering the submissions made by either side, this Court finds that the victim after the alleged sexual assault come down, continued to attend the tuition class, she has not complained to any one. On the other hand with the delay of two days complaint made to police. Hence, the origin of the case becomes doubtful. In view of the above, this Court is inclined to suspend the sentence imposed on the petitioner.

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9. Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal appeal:

(a) The petitioner/accused 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 Judge, Special Court for Exclusive Trial of cases under POCSO Act, Villupuram.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioner shall appear before the Trial Court once in three months at 10.30 a.m. on the first working day of the month, 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

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directed by the Trial Court.

10. Accordingly, this Criminal Miscellaneous Petition is ordered.

11.03.2024

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To

1. The Sessions Judge,
   Special Court for Exclusive Trial of cases
   under POCSO Act, Villupuram.

2. The Superintendent,
   Central Prison,Cuddalore.

3.The Inspector of Police,
   All Women Police Station,
   Kottakuppam, Villupuram.

4. The Public Prosecutor,
   High Court, Madras.

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