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Crl.MP.No.735/2024 in Crl.A.No.1211/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.02.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.735/2024 in Crl.A.No.1211/2022

R.C.Raja Sundaram

.. Petitioner

Versus

State by
Inspector of Police,
W-13, All Women Police Station,
Washermenpet,
Chennai.

.. Respondent

Prayer:-Civil Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence imposed on the petitioner in Spl.S.C.No.12 of 2021, on the file of the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Chennai, by judgment dated 26.09.2022, till the disposal of the above mentioned appeal in C.A.No.1211 of 2022.



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For Petitioner : Mr.Rajarathinam, Senior Counsel
for Mr.Ganesh Rajan

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by
Mr.C.Aravind

ORDER

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

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner vide judgement and order dated 26.09.2022 passed in Spl.S.C.No.12 of 2021 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Chennai, and to enlarge the petitioner on bail pending disposal of the appeal.

2. It is the case of the prosecution that A1 to A5 are close relatives, and that A2 is the cousin sister of the victim child. The prosecution alleges that all the five accused, with an intension to earn money from prostitution, took the victim child from her parents on 29.08.2020 with a false promise to



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provide education to her, and involved her in prostitution and subjected her to have sexual intercourse with A10 to A22 from 29.08.2020 to 09.11.2020 and on various dates. The petitioner herein is arrayed as A16.

3. Heard the learned counsel for the petitioner [A16] and Mr.E.Raj Thilak, the learned Additional Public Prosecutor appearing for the respondent/State.

4.Learned Senior Counsel for the petitioner submitted that the evidence of the Investigating Officer would disclose that the photographs of the petitioner, who is a veterinary doctor by profession, along with other accused, were taken on 15.12.2020 at the police station and the printouts of the same were taken on 08.01.2021. Thereafter, a test identification parade was conducted.

4.1 The learned Senior Counsel further submitted that the customers who visited the house of A3 were identified from the call records of A3. However, the call records were not produced before the Court. It is the



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further submission of the learned senior counsel that there were improvements in the evidence of the victim, and she had referred to the petitioner as a veterinary doctor, which is not found in her earliest versions, namely in her statement before the police and in the statement recorded under Section 164 Cr.P.C.; and that the petitioner is aged about 62 years and is in custody since 15.12.2020, and prayed for suspension of sentence.

5.Learned Additional Public Prosecutor, per contra, submitted that there is evidence to show that the petitioner was identified by the victim and the trial Court was right in convicting the petitioner, and prayed for dismissal of the petition for suspension of sentence.

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

7.It is seen from the evidence of the Investigating Officer that the victim had not stated about a doctor abusing her either in her statement before the police or the Statement under Section 164 Cr.P.C. However, we



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find that the victim has stated about a doctor, which refers to the petitioner for the first time in Court, which is an improvement. It is also on record that the petitioner was photographed as soon as he was arrested and printouts were taken on 08.01.2021, and thereafter, an identification parade was conducted. Further, the petitioner was aged 62 years at the time of the occurrence, and there is no reference to any old man abusing her in any of her earlier statements.

8.Considering the above facts, we are of the view that the petitioner has a fair chance of success in the appeal. Further, since he is aged 66 years at present and is in custody from 15.12.2020, and 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.

9. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment is **suspended** and the sentence imposed on the petitioner is suspended on the following conditions:



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- (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 for Exclusive Trial of Cases under POCSO Act, Chennai;
- (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.

[M.S.R.,J.] [S.M.,J.]
22.02.2024

(1/3)

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Issue order copy by 23.02.2024

Upload the order copy forthwith.



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To

1.The Sessions Judge, Special Court for
Exclusive Trial of Cases under POCSO Act, Chennai

2.The Inspector of Police,
W-13, All Women Police Station,
Washermenpet,
Chennai.

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

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



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M.S.RAMESH, J

and

SUNDER MOHAN, J

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