



Crl.M.P.No.2808 of 2024 in Crl.A.No.192 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.2808 of 2024
in Crl.A.No.192 of 2024

Vigneshwaran

... Petitioner/Sole Accused

Vs.

The State Rep. by
The Inspector of Police,
All Women Police Station,
Devala.
(Cr.No.1/2018)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (1) Cr.P.C., to suspend the sentence imposed in Spl.C.C.No.22 of 2018 dated 27.11.2023 on the file of the learned Sessions Judge, Magalir Neethimandram (FTMC), Udthagamandalam, The Nilgiris and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Ms.R.Chithra Devi

For Respondent : Dr.C.E.Pratap
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner/accused by judgment and order dated 27.11.2023 passed in Spl.C.C.No.22 of 2018 on the file of the

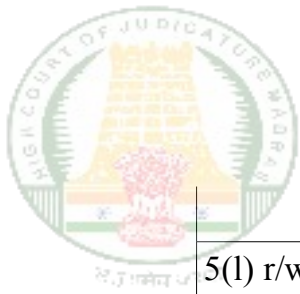


learned Sessions Judge, Magalir Neethimandram (FTMC),
Udhagamandalam, The Nilgiris and to enlarge the petitioner on bail
pending disposal of the appeal.

2. The case of the prosecution is that the petitioner and the victim are cousins; that when the parents of the victim were away, the petitioner is said to have committed penetrative sexual assault on the victim; that during the month of October 2017, when the victim complained of stomach ache, the victim's mother took her to the hospital; that since in the hospital, they suspected that the victim is suffering from appendicitis, no further treatment was given; that thereafter, in the month of January 2018, victim was taken to another hospital and on the examination by the Doctor, the victim girl was found to be pregnant; that the victim did not disclose as to who was responsible for pregnancy and ultimately informed only on 25.02.2018; and that thereafter, an FIR was registered.

3. The petitioner was convicted and sentenced by the trial Court as follows:

Offence under Section	Sentence imposed
448 of IPC	To undergo RI for one year and to pay a fine of Rs.1,000/-, in default to undergo SI for three



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	months.
5(l) r/w 6 of POCSO Act	To undergo RI for twenty years and to pay a fine of Rs.5,000/-, in default to undergo SI for two years.
5(n) r/w 6 of POCSO Act	To undergo RI for twenty years and to pay a fine of Rs.5,000/-, in default to undergo SI for two years.
5(j)(ii) r/w 6 of POCSO Act	To undergo RI for twenty years and to pay a fine of Rs.5,000/-, in default to undergo SI for two years.
The sentences are ordered to run concurrently.	

4. Heard Ms.R.Chithra Devi learned counsel for the petitioner and Mr.C.E.Pratap, learned Government Advocate (Crl. Side) appearing for the respondent/State.

5. The learned counsel appearing for the petitioner would submit that the prosecution had not established the age of the victim; that the trial Court had proceeded on the basis of the statement made by the victim herself; that the victim had studied upto 12th standard and therefore, the prosecution had suppressed the birth certificate in order to prosecute the petitioner under the POCSO Act; that the petitioner was aged 26 years at the time of occurrence and even if the prosecution case is true, the occurrence had taken place only due to mutual innocence and biological attraction; that the trial Court had erroneously sentenced the petitioner to 20 years of rigorous imprisonment, though the occurrence took place in the



year 2017 i.e., prior to the amendment of the POCSO Act, in the year 2019; that there are arguable points in the above appeal; that the petitioner is in custody from 27.11.2023 and therefore, the sentence imposed on the petitioner may be suspended.

6. The learned Government Advocate (Crl.Side) *per contra* submitted that the prosecution had established its case by examining the victim and her parents; that the medical evidence would show that the victim had delivered a child; that therefore, the trial Court was right in convicting the petitioner and the petitioner has not made out any ground for suspension of sentence; and hence, prayed for dismissal of the petition .

7. (i) The petitioner and the victim are cousins. The prosecution had not produced any evidence to prove the age of the victim, though the victim is said to have studied 12th standard. No ossification test was also conducted to prove the age.

(ii) Though the case of the prosecution is that the victim was taken to hospital in the month of January 2018, no complaint was lodged immediately. Further if the victim had been a minor, the hospital



authorities would have certainly informed the police. However, the complaint was made only on 26.02.2018. Further it is seen that though the occurrence had taken place in the year 2017 before the amendment of the POCSO Act, in 2019, the learned Judge had sentenced the petitioner to 20 years of Rigorous Imprisonment.

8. Considering the above, the submissions made by the learned counsel for the petitioner; that there are arguable points in the appeal, which requires consideration; the age of the victim and the petitioner; their relationship; and the fact that the petitioner is in custody from 27.11.2023 and that the appeal is not likely to be taken up in the near future, this Court is inclined to grant the relief of suspension of sentence to the petitioner.

9. Accordingly, this criminal miscellaneous petition stands **allowed**. The sentence imposed on the petitioner is suspended and the petitioner is ordered to be released on bail on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.10,000/-, with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Magalir Neethimandram (FTMC), Udthagamandalam, The Nilgiris;



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(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;

(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.

19.11.2024

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SUNDER MOHAN, J.

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To

1. The Sessions Judge,
Magalir Neethimandram (FTMC), Udhagamandalam
2. The Inspector of Police,
All Women Police Station,
Devala.
3. The Superintendent of Prisons,
Central Prison, Coimbatore.
4. The Public Prosecutor
Madras High Court.

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