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Crl.M.P.No.2867 of 2024
in Crl.A.No.194 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.2867 of 2024

in

Crl.A.No.194 of 2024

Suganthan

... Petitioner /Accused

Vs.

State rep by
The Inspector of Police,
All Women Police Station,
Thiruvannamalai District.
(Crime No.17 of 2019)

... Respondent / Complainant

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C. praying to suspend the sentence imposed in the judgment dated 05.07.2022 in Spl.S.C.No.192 of 2019, on the file of the learned Special Judge for POCSO Cases, Thiruvannamalai District, pending disposal of the Criminal Appeal and enlarge the petitioner on bail.

For Petitioner : Mr.S.Suresh

For Respondent : Dr.C.E.Pratap
Govt. Advocate (Crl.side)



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ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in Spl.S.C.No.192 of 2019 dated 05.07.2022 on the file of the learned Sessions Judge, Special Court for POCSO Cases, Thiruvannamalai District and release the petitioner on bail pending disposal of the above Criminal Appeal.

2. The case of the prosecution is that the petitioner, who was aged about 19 years at the time of occurrence, had committed penetrative sexual assault on the victim, who was aged about 8 years at the time of occurrence. On 13.07.2019 at about 5.00 p.m., the petitioner took the victim girl to the bathroom situated behind his house, closed her mouth with cloth, removed her dress and inserted his finger in the private part of the victim, thereafter threatened her with dire consequences. The complaint was lodged on 16.07.2019 and thereafter the victim was examined by Doctor/PW11.

3. The petitioner/accused in Spl.S.C.No.192 of 2019 was convicted by the Trial Court by judgment dated 05.07.2022 for the offences under Section



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366 of I.P.C. and Section 4, 5(l), 5(m) r/w 6 of POCSO Act and Section 506(i) of I.P.C. and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 year simple imprisonment, for the offences under Sections 5(l), 5(m) r/w 6 of POCSO Act, sentenced to undergo 20 years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 year simple imprisonment and for the offence under Section 506(i) of I.P.C., sentenced to undergo 2 years rigorous imprisonment and to pay a fine of Rs.2,000/-. The sentences were directed to run concurrently. Aggrieved by the same, he filed Crl.A.No.194 of 2024 before this Court along with the instant miscellaneous petition seeking suspension of sentence and bail.

4.The learned counsel for the petitioner would submit that the allegations are false that the petitioner's paternal uncle and PW1(mother of the victim) and PW1's father-in-law had prior enmity and there was a bitter relationship between both the families and the petitioner has been victimized; that in any case, the evidence of the victim would only suggest the offence of sexual assault and not penetrative sexual assault; that PW3/father of the victim had deposed; that the petitioner was arrested on 13.07.2019, which falsifies the prosecution case that the complaint was lodged three days later and that the petitioner is in custody from 16.07.2019.



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5.Learned Government Advocate (Crl. Side) would submit that PW11/Doctor's evidence would indicate that the victim's hymen was not intact and there was an injury in her private part.

6. Heard the learned counsel for the petitioner as well as the learned Government Advocate (Crl.side) appearing for the respondent and perused the records.

7. Admittedly, the petitioner is in custody from 16.07.2019. The prosecution case is based on the evidence of the victim, who was 8 years old at the time of occurrence. According to the victim, the petitioner pressed his hand on the private part of the victim. In the light of that evidence and in the light of the Doctor's evidence that the injuries could have caused to the victim even due to infection, it has to be examined whether the conviction can be based on the sole testimony of the victim.



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8. Considering the nature of evidence of the victim; that there are other arguable points in the appeal, which requires consideration; the fact that the appeal is not likely to be taken up in the near future and that the fact that petitioner is in custody from 16.07.2019 and also considering the age of the petitioner, this court is inclined to grant the relief of suspension of sentence to the petitioner.

9. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioner is suspended till the disposal of the above Criminal appeal 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, Special Court for POCSO Cases, Thiruvannamalai District;
- (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



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(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.

11.12.2024

rsi

Issue order copy by 12.12.2024
Upload the order copy forthwith.

To

- 1.The Sessions Judge,
Special Court for POCSO Cases,
Thiruvannamalai District.
- 2.The Superintendent,
Central Prison,
Vellore.
- 3.The Inspector of Police,
All Women Police Station,
Thiruvannamalai District.
- 4.The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J.

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