



*Crl.M.P.No.1378 of 2024
in Crl.A.No.125 of 2024*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.1378 of 2024 in
Crl.A.No.125 of 2024

Ramesh

... Petitioner

Vs.

State by
The Inspector of Police,
W-13, All Women Police Station,
Washermanpet,
Chennai - 600 021.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C., to suspend the sentence passed in Spl.S.C.No.26 of 2023 on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai imposing rigorous imprisonment of ten years and also for payment of Rs.10,000/- fine, in default, to undergo three months simple imprisonment and grant bail pending disposal of the above appeal.

For Petitioner : Mr.R.Karunakaran

For Respondent : Mr.R.Vinothraja,
Government Advocate (Crl. Side)



WEB COPY



*Crl.M.P.No.1378 of 2024
in Crl.A.No.125 of 2024*

ORDER

The petitioner/accused in Spl.C.C.No.26 of 2023 was convicted by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai by judgment dated 27.11.2023 and sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo three months simple imprisonment for the offence under Section 6 of Protection of Children from Sexual Offences Act [POCSO Act]. Aggrieved against the same, the petitioner preferred the present criminal appeal and suspension of the sentence.

2.The contention of the learned counsel for the petitioner is that the petitioner and P.W.2/victim girl after attaining majority got married and they are now living as husband and wife. Even during evidence before the Trial Court, P.W.2 stated that only due to her grandmother's threat and force, she gave statement against the petitioner. He would submit that the case against the petitioner originated on the complaint of P.W.1, who is a neighbour, who found the victim girl pregnant but it was not informed to anyone even at the



*Crl.M.P.No.1378 of 2024
in Crl.A.No.125 of 2024*

advanced stage which caused suspicion. The further allegation against the petitioner is that the petitioner was in live-in relationship with A2/mother of P.W.2 and taking advantage of the same, the petitioner committed penetrative sexual assault on the victim girl. He would further submit that the baby born to the victim girl was handed over to P.W.8, who sold the baby. He further produced the birth certificate of the baby Hepsiba, who was born to the petitioner and P.W.2/victim girl on 31.05.2019. He has also produced the photograph confirming the marriage between the petitioner and P.W.2. He would further submit that none of the witnesses except the Doctor/P.W.12 and the Investigating Officer/P.W.13 supported the case of the prosecution. He further submitted that once the Trial Court acquitted A2/mother of P.W.2, the allegation against the petitioner of having live-in relationship with A2 no more exists. Further, in view of the petitioner and P.W.2 getting married and having a child, the conviction of the petitioner merely on moral grounds is not sustainable. Hence, prayed for suspension of sentence.



*Crl.M.P.No.1378 of 2024
in Crl.A.No.125 of 2024*

WEB COPY

3.The learned Government Advocate (Crl. Side) filed his counter and submitted that on the complaint of P.W.1/defacto complainant, a case was registered against the petitioner by P.W.13/Investigating Officer. P.W.1/defacto complainant later won over and not supported the case of the prosecution. The victim was a minor aged about 16 years and 8 months at the time of occurrence and to prove the same, Ex.P13/Bonafide Certificate was marked. He would submit that the Doctor who examined the victim girl confirmed the medical condition of the victim girl and also the baby born to the petitioner and the victim girl. The Trial Court on the evidence and attending circumstances convicted the petitioner.

4.Considering the submissions made and on perusal of the materials, it is seen that A2 in this case has been acquitted, hence the primary allegation that the petitioner and A2 were in live-in relationship and taking advantage of the same, the petitioner committed penetrative sexual assault on the victim girl has to be discerned with the evidence of other witnesses. In this case, the victim girl/P.W.2 in her evidence has clearly stated that Ex.P2/164 Cr.P.C. statement was given on the compulsion of her



*Crl.M.P.No.1378 of 2024
in Crl.A.No.125 of 2024*

grandmother. All the other witnesses, namely, the defacto complainant, neighbours and the hospital employee not supported the case of the prosecution. The only evidence available is Doctor/P.W.12 and the Investigating Officer/P.W.13. From the Doctor's evidence, it is seen that the victim girl delivered a baby. The petitioner admits the marriage between the petitioner and the victim girl and also the birth of the child. Further, in this case Ex.P13/Bonafide Certificate to prove the age of the victim was marked through Investigating Officer and not through the School Authorities. No birth certificate of the victim girl produced and hence, the age of the victim girl cannot be taken as proved. It is also seen that the victim girl is still residing in the petitioner's house and it is the petitioner's family who is taking care of the victim girl and the child. Hence, this Court finds that the conviction and sentence imposed by the Trial Court for the offence under Section 6 of POCSO Act needs re-consideration.

5.In view of the above, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and he is ordered to be enlarged on bail, on condition that he shall execute a bond



*Crl.M.P.No.1378 of 2024
in Crl.A.No.125 of 2024*

for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, each for a like sum to the satisfaction of the trial Court.

6.Further, the petitioner shall appear before the Trial Court on the first working day of once in three months at 10.30 a.m. until the disposal of the criminal 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 directed by the Trial Court. Accordingly, this Miscellaneous Petition is ordered.

30.09.2024

cse

Note: Issue order copy on 01.10.2024



WEB COPY



*Crl.M.P.No.1378 of 2024
in Crl.A.No.125 of 2024*

To

- 1.The Inspector of Police,
W-13, All Women Police Station,
Washermanpet,
Chennai - 600 021.
- 2.The Sessions Judge,
Special Court for Exclusive Trial of
Cases under POCSO Act,
Chennai.
- 3.The Superintendent,
Central Prison-1,
Puzhal, Chennai.
- 4.The Public Prosecutor,
Madras High Court.



WEB COPY



*Crl.M.P.No.1378 of 2024
in Crl.A.No.125 of 2024*

M.NIRMAL KUMAR., J.

cse

Crl.M.P.No.1378 of 2024 in
Crl.A.No.125 of 2024

30.09.2024