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CrI.M.P.No.2343 of 2024
in CrI.A.No.172 of 2024

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M.NIRMAL KUMAR, J.

This Criminal Miscellaneous Petition is filed to suspend the execution of the sentence imposed by the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, in Spl.S.C.No.91 of 2022 dated 01.02.2024 and release the petitioner on bail pending disposal of the main Criminal Appeal.

2.The petitioner was convicted by the trial Court for offence under Section 11(i), (iv) r/w. 12 of POCSO Act and sentenced to undergo three years rigorous imprisonment and to pay Rs.5,000/-, in default to undergo two months simple imprisonment.

3.The contention of the learned counsel for the petitioner is that the victim and her parents are residing in the next door of the petitioner. There have been constant fight between them with regard to rearing of goats between the petitioner and the victim's father/PW3. He would submit that



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the victim was tutored to speak against the petitioner. Further the case is that the petitioner by exhibiting his private parts to the victim girl committed sexual assault, which the victim girl initially not informed her mother but later she informed, that is the reason for the delay which is unacceptable. In this case except the witnesses, namely, PW1/victim girl PW2 and PW3, mother and father of the victim girl, no other witnesses stated anything against the petitioner. He would further submit that the Trial Court primarily based its conviction on the evidence of PW1/victim girl and her 164 statement/Ex.C1. The petitioner is a neighbour, there is a constant fight between the victim's family and the petitioner. Further there is a public tap for fetching water opposite to the petitioner's house and the case projected by the prosecution is not possible and highly improbable since always people present there to fetch water and at no point of time, the petitioner and the victim girl were alone whereby the petitioner said to have exhibited his body and thereby committed the offence.

4.The learned Additional Public Prosecutor filed his counter and submitted that on 28.03.2022 at about 1.00 p.m, P.W.2 lodged a complaint



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stating that her daughter/victim girl is aged about 7 years and studying II standard. The petitioner, who is a neighbour, is rearing goats and cows by constructing a cement sheeted shed. When the victim girl was playing outside, the petitioner/accused stood in the shed and exhibited his private parts before the victim girl. Since the victim girl was scared, she did not tell anyone about what was happened. On 27.03.2022 at about 9.00 a.m., the victim girl took her brother and went to her relative's house, at that time, while crossing the petitioner's cow shed, again the petitioner stood there and exhibited his private parts to the victim girl. Thereafter, the victim girl told her mother and her relative about what was happened and complaint was lodged. PW8/Head Constable received the complaint and registered FIR/Ex.P6 in Crime No.7 of 2022 for the offence under Section 11(i) r/w. 12 of POCSO Act. PW11 took up the investigation, visited the scene of occurrence, prepared observation mahazar/Ex.P5 and rough sketch/Ex.P9 in the presence of witnesses and recorded their statements. During the course of investigation, the petitioner was arrested, confession statement recorded and remanded to judicial custody. On completion of investigation, charge sheet filed. During the trial, on the side of the prosecution PW1 to PW12



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examined and Ex.P1 to Ex.P11 marked. On the side of the defence, no witnesses examined and no exhibits marked. On conclusion of trial, the trial Court convicted the petitioner as stated above.

5.Considering the submissions and on perusal of the materials, it is seen that the petitioner and the victim are neighbours, there have been dispute between them in rearing of goats and cow. The house is situated near the public tap where always people will be available and there is a delay in lodging the complaint. Further, the Trial Court had already suspended the sentence imposed on the petitioner. Hence, this Court is inclined to suspend the sentence of Imprisonment till the disposal of the appeal.

6.Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner 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 Principal Special Court for Exclusive



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8.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 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.

15.03.2024

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