



*Crl.M.P.No.2586 of 2024
in Crl.A.No.506 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

**Crl.M.P.No.2586 of 2024
in
Crl.A.No.506 of 2023**

**Saravanakumar
S/o.Palanisamy**

... Petitioner/Accused

Vs.

**State represented by
The Inspector of Police,
All Women Police Station,
Erode.
(Crime No.27 of 2021)**

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) of Cr.P.C to suspend the sentence imposed in Spl.S.C.No.09 of 2022 by the judgment dated 15.10.2022 passed by the learned Sessions Judge, Sessions Court, Magalir Neethimandram (Fast Track Mahila Court) Erode and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.R.Vivekananthan

**For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor**

ORDER



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2.The petitioner/accused in Spl.S.C.No.9 of 2022 was convicted by the trial Court by judgment dated 15.10.2022 for offence under Sections 5(m), 5(n), 5(l) punishable under Section 6 of Protection of Children from Sexual Offences Act, 2012 and 506(i) of IPC and sentenced to undergo twenty years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo 3 months simple imprisonment for offence under Sections 5(m), 5(n), 5(l) punishable under Section 6 of POCSO Act and to undergo two years rigorous imprisonment and to pay a fine of Rs.5,000/- for offence under Section 506(i) of IPC. The sentences are directed to run concurrently, against which, the petitioner preferred a appeal in Crl.A.No.506 of 2023 before this Court along with suspension of sentence petition.

3.During trial, on the side of the prosecution, PW1 to PW11 examined



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and marked Exs.P1 to P17. On the side of the defence, no witnesses examined and no documents marked. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, had convicted the petitioner as stated above.

4.The contention of the learned counsel for petitioner is that the petitioner had been falsely implicated in this case for the reason that the petitioner had an illicit relationship with one Rani prior to marriage and even after the marriage the same continued. PW2/mother of the victim girl on several occasions picked up fight in this regard and it was a burning issue in the family. Despite the same, the petitioner continued his relationship but he had taken care of his wife and children properly. PW2/mother of the victim finding that the petitioner continued his relationship with Rani, she made her daughter/PW1 to lodge a false complaint against him as though from the age of 12 of PW1, the petitioner had been indulging in the act of committing penetrative sexual assault on PW1/victim girl. The victim girl/PW1, the petitioner and his elder son are residing in the same house. Further, there are adjacent houses and the victim girl had been attending school regularly and she never filed any complaint with this story. PW1 and PW2 though in the



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initial rush lodged a complaint against the petitioner making serious allegations of penetrative sexual assault, after some time realising the mistake, both had resiled from the earlier statement. The trial Court convicted the petitioner by taking the portion of the questions put to PW1 and PW2 and not the entire questions and answers. Further he referred to the evidence of PW1/victim, in which, the victim had clearly stated that she was not happy with her father's conduct, hence she lodged a complaint that too on the advice of the police and the earlier complaint as well as 164 statement, she had given on the advice of the police. PW2 in her evidence stated about the petitioner's relationship with one Rani for which, she was not happy and the probability of petitioner being implicated is there and Trial Court convicting the petitioner on the resiled statement of the witnesses not proper. Further submitted that the petitioner has arguable points and fair chance of success in this appeal. Hence, he prays for granting suspension of sentence to the petitioner.

5.The learned Government Advocate (Crl. Side) on the other hand filed his counter and submitted that the case of the prosecution is that the victim is



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the daughter of accused Saravankumar. The victim is aged about 16 years. She was living with her parents and her brother. The accused treated his daughter, very differently after she attain puberty. When the child was to be alone with her father he hugged her tightly and kissed her on her lips and also had habit of biting her lips. Days before the occurrence, during one night when she was sleeping after her brother and mother's slept he came to the child removed her night pant and panties and kissed her private part, she woke up and pushed her father away. From the date of attending the puberty till 10.09.2021 this accused had continuously harassed her by kissing her private part and pressing her breast and hugging her and kissing her and threatened her not to told the matter to anyone. Further the accused compelled the victim to have her bath keeping open the door of the bathroom and enjoyed her nudeness. The child vexed up with the continuous assault had gained courage to inform her mother. Hence the complaint.

5.1.Based on the above complaint, a case was registered in All Women Police Station, Erode in Crime No.27 of 2021 under Sections 5(m), 5(n), 5(1), r/w.6 of Pocso Act, 506(i) IPC on 24.09.2021 at about 09.00 hours, by Tmt.V.Thaila, the then Sub Inspector of police, All Women Police Station, Erode and submitted before Tmt. Neeladevi, the then Inspector of Police and



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she took up the case for investigation. During the course of investigation, the then investigation officer went to the scene of occurrence and drew rough sketch and prepared observation mahazar in the presence of witnesses and examined the witnesses and recorded their statements.

5.2.He further submitted that on 24.09.2021 at about 12.30 hours the then Inspector of Police arrested the accused and recorded his confession statement and produced him before the Learned Mahila Court, Erode and remanded him into Judicial custody. The then Inspector of Police after completion of investigation filed a charge sheet before the Learned Sessions Judge, Magalir Neethimandram, [Fast Track Mahila Court], Erode and the same was taken on file and assigned Spl.S.C.No.9 of on 2022, dated 17.02.2022. The trial court framed charges against the accused. During trial, the prosecution has examined 11 witnesses and marked 17 exhibits and no material object marked. On defence side no witness, no exhibits and no material object marked.

5.3.He further submitted that during 313(1)(b) Cr.P.C. questioning about the incriminating the evidences adduced by the prosecution witnesses, the accused denied the entire case as false. After conclusion of due trial, the



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trial court by its judgment in Spl.S.C.No.09 of 2022 dated 15.10.2022 convicted the Petitioner as stated above.

5.4.Learned Additional Public Prosecutor further filed an additional counter and submitted that as regards the wrong framing of charges, the petitioner not challenged the same during the trial and for the first time he is making such objections. Further the victim girl had clearly stated that from the date of attaining puberty till 10.09.2021, she had been continuously harassed by the petitioner by pressing her breast and hugging her. During the cross of PW1 and PW2 by Special Public Prosecutor, both admitted that they had given statement that the earlier statement was not by force, which has been rightly recorded by the trial Court and convicted the petitioner. Hence, prays for dismissal of the petition.

6.Considering the submissions made and on perusal of the material available on record, it is seen that PW1 and PW2 are the daughter and wife of petitioner. PW1's specific case is that the petitioner had illicit relationship with one Rani prior to marriage and after marriage he continued the same, which is objected by PW2. Further, in this case the date of occurrence is between the year 2017 to 2021. PW1/victim states that since she was not



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happy with the conduct of her father, she had given a statement as per the advice of the police. PW2's endeavour was that the petitioner to have no connection with the said Rani. Later it is seen that PW1 and PW2 resiled from their earlier statement to the police as well as from 164 statement. The trial Court had taken only a question and answers and left out the remaining part, both PW1 and PW2 states that only on the compulsion of the police such statement given. The evidence to be considered as a whole, not in parts. In view of the same, this Court finds that the finding of the Court below needs to be reconsidered.

7. Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal appeal:

(a) The petitioner/Accused 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 learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Erode.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned



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Judge may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioner shall appear before the Trial Court once in three months at 10.30 a.m. on the first working day of the month, 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.

8. Accordingly, this Criminal Miscellaneous Petition is ordered.

11.03.2024

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M. NIRMAL KUMAR, J.

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To

- 1.The Inspector of Police,
All Women Police Station,
Erode.
- 2.The Sessions Judge,
Magalir Neethimandram (Fast Track Mahila Court),
Erode.
- 3.The Superintendent,
Central Prison,
Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.

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