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Crl.M.P.No.2498 of 2024
in Crl.A.No.176 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2024

CORAM:

THE HON'BLE **MR.JUSTICE M. NIRMAL KUMAR**

Crl.M.P.No.2498 of 2024

in

Crl.A.No.176 of 2024

B.Senthilkumar

S/o.Bose

... Petitioner/Accused

Vs.

State Rep.

The Inspector of Police,

W-19, All Women Police Station,

Adayar, Chennai.

Crime No.2237 of 2015

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of Code of Criminal Procedure, to suspend the sentence imposed in S.C.No.284 of 2017 vide judgment dated 07.06.2023 on the file of learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai and enlarge the petitioner on bail till pending disposal of the above criminal appeal.

For Petitioner : Mr.R.Sathishkumar

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



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence imposed in S.C.No.284 of 2017 vide judgment dated 07.06.2023 on the file of learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai and enlarge the petitioner on bail till pending disposal of the above criminal appeal.

2.The petitioner/Accused was convicted by the trial Court in S.C.No.284 of 2017 by judgment dated 07.06.2023 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 offence under Section 6 of POCSO Act, against which, the petitioner preferred an appeal in Crl.A.No.176 of 2024 before this Court along with petition seeking suspension of sentence and bail.



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3. During trial, on the side of the prosecution, PW1 to PW12 examined and marked Exs.P1 to P10. 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, convicted the petitioner as stated above.

4. The contention of the learned counsel for petitioner is that the petitioner has been falsely implicated in this case. The petitioner and PW1/mother of the victim were in friendly relationship, which was objected and for that reason, he has been falsely implicated in this case. The case projected against the petitioner is that on 08.06.2015, the mother of the victim and victim were in the temple at that time, the petitioner took the victim girl offering tea and bun and took her to Thiruvannamiyur beach in an isolated place and committed sexual assault. PW1/ mother of the victim's specific case is that her daughter found crying with complaints of pain and blood oozing in her private part. PW5 is the other witness, who states about seeing the victim



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with bleeding. PW10 is the Inspector of Police, who received complaint, registered an F.I.R./Ex.P7 on the same day at about 10.30 p.m. but the victim never sent to the Doctor immediately, despite specific case is blood was oozing. PW4/Doctor, who marked Exs.P3 and P4 says that one Suganya Devi/Doctor examined the victim and now she is transferred and her whereabouts not known. She admits victim brought to the hospital three months after the occurrence for examination. The other witnesses in this case, namely, PW2, PW3, PW6 and PW7 not supported the case of the prosecution. PW9/Magistrate while recording statement of the victim under Section 164 Cr.P.C. states that victim was in a clear state of mind while questioning and after satisfying statement recorded. But the prosecution case is victim was of unsound mind, taking advantage of the same the petitioner committed the offence. In this case, the initial investigating officer/PW11 though states that she examined the victim on 09.06.2015, thereafter, she had not conducted any substantial investigation. PW11/Investigating Officer



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admits that she made a request to the Court for medical examination of the victim and on 28.09.2015, the victim was examined by one Shakuntala Devi and her statement under Section 164 Cr.P.C. recorded on 11.09.2015. According to the petitioner, it is a tutelage version. PW12/Investigating Officer filed charge sheet and nothing more. In view of the same, the trial Court committing the petitioner is not proper. Hence, he prays for granting suspension of sentence to the petitioner.

5.The learned Government Advocate (Crl. Side) filed his counter submitting that in this case the victim girl had clearly narrated about the act of the petitioner in her statement under Section 164 Cr.P.C. recorded by PW9. The victim girl subsequently passed away due to Corona virus, hence, she could not be examined. PW1/mother of the victim girl narrates the happenings to her daughter, on the same day she went to the police station, lodged a complaint to P.W.10. There was some delay for medical examination of the victim girl due to the victim girl psychologically affected



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and for that reason only three months time taken and thereafter the victim was sent to medical examination. The Doctor's evidence clearly states that hymen found not intact confirming that victim subjected to penetrative sexual assault. There was some laches in the investigation but that would not straight away accrue to the petitioner's benefit to deny justice to the victim. Hence, prays for dismissal of the petition.

6.Considering the submissions made and on perusal of the materials available on record, it is seen that the specific case of PW1 is that PW1/mother of the victim found her daughter oozing with blood in her private part which soaked her dress. It is also her case PW1 went to the police station, on the same day, PW10/Inspector of Police registered F.I.R. Neither PW10 nor PW11/initial investigating officer gave explanation for non seizure of blood stained clothes. PW1 evidence is that her husband Nandakumar present along with victim girl on the date of occurrence. In this case, the said



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Nandakumar not examined. It is also to be seen that victim was taken to the hospital three months after the occurrence, which is not disputed. The Doctor naturally gave an opinion that there is no injuries. The ruptured hymen might be for various reasons. In this case, the version of PW1 is highly doubtful and the only evidence against the petitioner. In view the above, this Court finds that the conviction of the petitioner needs reconsideration. In view of the same, this Court is inclined to grant suspension of sentence to the petitioner.

7. Accordingly, 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 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.



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8.Further, the petitioner shall appear before the Trial Court on the first working day of every English Calendar month 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.

9.Accordingly, this Criminal Miscellaneous Petition is ordered.

23.09.2024

Index : Yes/No

Internet : Yes/No

Speaking order / Non-speaking order

Neutral citation : Yes/No

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Note: Issue order copy on 24.09.2024.



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To

- 1.The Inspector of Police,
W-19, All Women Police Station,
Adayar, Chennai.
- 2.The Sessions Judge,
Special Court for Exclusive Trial of Cases
under POCSO Act, Chennai.
- 3.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

rsi

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23.09.2024