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CrI.M.P.No.3458 of 2024
in CrI.A.No.238 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, Fast Track Court Exclusively to deal with Offences under the POCSO Act at Puducherry in Spl.S.C.No.49 of 2023 dated 14.02.2024 and release the petitioners on bail pending disposal of the main Criminal Appeal.

2.The petitioners/A1 and A2 were convicted by the trial Court and sentenced to undergo six months rigorous imprisonment for the offence under Section 448 IPC and to undergo three years rigorous imprisonment and to pay Rs.2,000/- each, in default to undergo two months simple imprisonment for the offence under Section 8 of POCSO Act.

3.The contention of the learned counsel for the petitioners is that PW4/father of the victim had let out the Hotel in Kamaraj Salai to the first



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petitioner for lease on 01.05.2019 and in the year 2020 there was a dispute between the first petitioner and PW4 regarding the payment of rent. With regard to the same, multiple complaints were lodged by the first petitioner against PW4 and a suit was filed in O.S.No.1157 of 2020 before the District Munsif Court, Puducherry. Following the same, on 05.09.2020 PW4 and PW3 along with hooligans trespassed into the Hotel of the first petitioner, damaged the properties and threatened the first petitioner with dire consequences, for which, again a complaint was lodged and a case in Crime No.252 of 2020 was registered against PW3 and PW4, mother and father of the victim girl for the offence under Sections 427, 448, 294(b), 506(i) and 34 of IPC. Thereafter, PW3 and PW4 had instructed the victim girl to lodge a false complaint against the petitioners. He would further submit that in this case, the prosecution had not shown that whether there was any sexual intent with the petitioners when they committed the above act. In this case, the occurrence is said to have taken place on 05.09.2020, complaint was lodged only on 07.09.2020 and FIR came to be registered with a delay of four days, this delay had not been explained. The victim as well as her parents, PW3 and PW4 completely suppressed about the earlier incident and



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the complaint lodged by the first petitioner against PW4. He further submitted that PW5 to PW7 are projected eye witnesses but their conduct is highly artificial. Hence, he prayed for suspension of sentence.

4.The learned Public Prosecutor (Puducherry) filed his counter and submitted that on 10.09.2020, proceeding was received from the Child Welfare Committee, Puducherry along with the statements of the victim girl, PW3 and PW4/mother and father of the victim girl requesting to take action against the petitioners/accused. On perusal of the statement of the victim girl, it is seen that on 05.09.2020 at about 12.30 p.m., when she was reading books, the petitioners came to her house and asked about her father, abused her in filthy language, pulled her with sexual intent and touched her private parts. Based on the above, FIR/Ex.P6 in Crime No.257 of 2020 was registered for the offence under Section 8 of POCSO Act. PW11 took up the investigation, visited the scene of occurrence, prepared observation mahazar and rough sketch in the presence of witnesses and recorded their statements. On completion of investigation, charge sheet filed. During the trial, on the side of the prosecution PW1 to PW11 examined, Ex.P1 to Ex.P7



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and M.O.1 marked. On the side of the defence, DW1 to DW4 examined, Ex.D1, Ex.D2, D.M.O.1 and D.M.O2 marked. On conclusion of trial, the trial Court convicted the petitioners as stated above.

5.Considering the submissions made and on perusal of the materials, it is seen that already there is a dispute between the first petitioner and the victim's father with regard to the Hotel leased out by the victim's father to the first petitioner. There are complaint and counter complaint between them and there is a delay in lodging the complaint. Further, the Trial Court had already suspended the sentence imposed on the petitioners. 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 petitioners is suspended till the disposal of the appeal and the petitioners are ordered to be enlarged on bail, on condition that they shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the learned Sessions Judge,



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Fast Track Court Exclusively to deal with Offences under POCSO Act at
Puducherry.

8.The petitioners 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 they were not able to appear before the Trial Court on that day, they 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 their absence as directed by the Trial Court. Accordingly, this Miscellaneous Petition is ordered.

15.03.2024

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