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Crl.MP.No.4121/2024 in Crl.A.No.90/2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.03.2024

PRONOUNCED ON : 27.03.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.4121/2024 in Crl.A.No.90/2024

Giridharan .. Petitioner/A16

Versus

State by

Inspector of Police,

W-13, All Women Police Station,

Washermenpet, Chennai.

(Cr.No.18/2020)

..Respondent/Complainant

Prayer:-Criminal Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence imposed on the petitioner in Spl.S.C.No.12 of 2021, on the file of the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Chennai, by judgment dated 26.09.2022, till the disposal of the above mentioned appeal.

For Petitioner : Mr.G.Saravanan

For Respondent : Mr.E.Raj Thilak



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Additional Public Prosecutor
assisted by
Mr.C.Aravind

ORDER

[Order of the Court was made by SUNDER MOHAN, J]

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner vide judgement and order dated 26.09.2022 passed in Spl.S.C.No.12 of 2021 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Chennai, and to enlarge the petitioner on bail pending disposal of the appeal.

2. It is the case of the prosecution that A1 to A5 are close relatives, and that A2 is the cousin sister of the victim child. The prosecution alleges that all the five accused, with an intention to earn money from prostitution, took the victim child from her parents on 29.08.2020 with a false promise to provide education to her, and involved her in prostitution and subjected her to have sexual intercourse with A10 to A22 from 29.08.2020 to 09.11.2020 and on various dates. The petitioner herein is arrayed as A16.



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3. Heard the learned counsel for the petitioner [A16] and Mr.E.Raj Thilak, the learned Additional Public Prosecutor appearing for the respondent/State.

4.Learned counsel for the petitioner submitted that the petitioner's name was not found in the FIR or in Section 164 Cr.P.C. statement given by the victim; that except for the identification of the petitioner by the victim before the trial Court, there is no other evidence to connect the petitioner with the alleged offence; that the identification is suspect; that the petitioner is in custody from 12.12.2020 right from the day of arrest; and since the appeal is not likely to be taken up in the near future, prayed for suspension of sentence.

5.Learned Additional Public Prosecutor, per contra, submitted that there is evidence to show that the petitioner was identified by the victim and the trial Court was right in convicting the petitioner, and prayed for



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dismissal of the petition for suspension of sentence.

6. We have carefully considered the rival submissions and perused the records.

7. (i) It is seen from the evidence of PW2, the victim that the petitioner was shown to the victim and was asked whether she knew him and the victim had stated that he had come to the house of one Sandhiya [A3], where she was subjected to sexual intercourse. However, we find in the deposition of PW2 that there is an endorsement by the trial Court to the effect that PW2 had privately informed the learned Judge that she was unable to identify some of the accused and that some of the accused were shown to her in the phone. Apart from the identification of the victim, there is no other evidence.

(ii) Further the petitioner's name does not find place in the FIR or in Section 164 Cr.P.C., statement of the victim and the issue whether the



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identification of the petitioner by the victim in the dock can be accepted, has to be examined.

8. Therefore, in view of the above and considering the fact that the petitioner is in custody for nearly 3 years and 3 months, and the appeal is not likely to be taken up in the near future, we are inclined to grant the relief of suspension of sentence to the petitioner herein/A16.

9. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment imposed on the petitioner/A16 alone is **suspended** on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two independent sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai;
- (ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial



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Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity; and

(iii) The petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the trial Court on any 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.

(iv) This order of suspension shall be subject to payment of fine imposed on the petitioner by the Trial Court in the Judgement.

[M.S.R.,J.] [S.M.,J.]
27.03.2024

ars

Issue order copy by 28.03.2024

Upload the order copy forthwith.

Internet: Yes

To

1. The Sessions Judge, Special Court for
Exclusive Trial of Cases under POCSO Act, Chennai



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2.The Inspector of Police,
W-13, All Women Police Station,
Washermenpet,
Chennai.

3.The Superintendent of Prison,
Central Prison, Puzhal.

4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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M.S.RAMESH, J

and

SUNDER MOHAN, J

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Pre-delivery order in
Crl.MP.No.4121/2024 in Crl.A.No.90/2024

27.03.2024