



Crl.MP.No.6073/2024 in Crl.A.No.400/2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.07.2024

PRONOUNCED ON : 02.08.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.6073/2024 in Crl.A.No.400/2024

Anitha @ Kasthuri

.. Petitioner/A9

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.N.Nishar Ahamed

For Respondent : Mr.A.Gokulakrishnan

Additional Public Prosecutor



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Crl.MP.No.6073/2024 in Crl.A.No.400/2024



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Crl.MP.No.6073/2024 in Crl.A.No.400/2024

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. The petitioner, who is arrayed as A9 in the above Sessions Case, was convicted and sentenced as follows:

Offence under Section	Sentence imposed
5(1)(a)(i) of ITP Act	To undergo RI for 7 years and to pay a fine of Rs.5,000/- in default to under go SI for 1 month.
4(1) of ITP Act	To undergo imprisonment for 7 years.
370 (A) (1) of IPC	To undergo RI for 5 years and to pay a fine of Rs.5,000/- in default to under go SI for 1 month.
6 r/2 17 of POCSO Act, 2012	To undergo RI for 20 years and to pay a fine of Rs.5,000/- in default to under go SI for 1 month.
The sentences were ordered to run concurrently.	

3. Challenging the above conviction and sentence, the petitioner has



Crl.MP.No.6073/2024 in Crl.A.No.400/2024

filed the above Criminal Appeal and seeks suspension of sentence and bail in the present petition.

4. Heard the learned counsel for the petitioner [A9] and Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor appearing for the respondent/State.

5. 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 A9. The allegation against the petitioner herein is that she along with A3, took the victim to a lodge in Kovalam and that A18 committed penetrative sexual assault.

6. (I) The learned counsel for the petitioner/A9 submitted that the



Crl.MP.No.6073/2024 in Crl.A.No.400/2024

petitioner had absolutely no role and even according to the prosecution, she had accompanied A3, to Kovalam lodge and there is no evidence to show that she had subjected the victim to penetrative sexual assault by any third party.

(ii) The learned counsel further submitted that the investigating officer admitted that the petitioner was arrested only on the confession of A3; that the petitioner had not confined the victim in her house, which had been confirmed by the learned trial Judge, in his judgment; that the petitioner is in custody from 2020; and since the appeal is not likely to be taken up in the near future, prayed for suspension of sentence.

7. Learned Additional Public Prosecutor, *per contra*, submitted that it is the prosecution case that the petitioner, along with the other accused, compelled the victim to have sexual intercourse, with strangers and that the trial Court was right in convicting the petitioner and prayed for dismissal of the petition for suspension of sentence.



Crl.MP.No.6073/2024 in Crl.A.No.400/2024

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

9. It is seen from the evidence that the victim has stated in her evidence that the petitioner along with A3 took her to a lodge. 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, the prosecution had examined the lodge owners. However, no test identification parade was conducted and the room was not admittedly booked in the name of the petitioner and they had identified A9 in Court for the first time, which appears to be doubtful. The petitioner was arrested on the confession of A3, as admitted by the investigating officer. Therefore, we are of the *prima facie* view that the petitioner has a fair chance of success in the above appeal.

10. Therefore, in view of the above and considering the fact that the



Crl.MP.No.6073/2024 in Crl.A.No.400/2024

petitioner is in custody since 2020, 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/A9.

11. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment imposed on the petitioner/A9 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 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 she is not able to appear before the trial Court on any day, she shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial



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Crl.MP.No.6073/2024 in Crl.A.No.400/2024

Court on any other day in lieu of the date of her 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.]
02.08.2024

ars

Issue order copy today.

Upload the order copy forthwith.

Internet: Yes

To

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

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

3.The Superintendent of Prison,
Special Prison for Women, Puzhal.

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



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Crl.MP.No.6073/2024 in Crl.A.No.400/2024

M.S.RAMESH, J

and

SUNDER MOHAN, J

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Pre-delivery order in
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02.08.2024