



Crl.MP.Nos.5791 and 7011 of 2024
in Crl.A.Nos.371 and 472 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.Nos.5791 and 7011 of 2024
in Crl.A.Nos.371 and 472 of 2024

Crl.M.P.No.5791 of 2024 in Crl.A.No.371 of 2024

A.Vinobhaji

...Petitioner/Appellant/A15

Versus

State rep by,
The Inspector of Police,
W-13 All Women Police Station,
Washermenpet, Chennai-600 021.
(Crime No.18 of 2020)

...Respondent/Respondent



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WEB CO **Crl.M.P.No.7011 of 2024 in Crl.A.No.472 of 2024**

Ponraj

...Petitioner/Appellant /A20

Versus

State rep by,
The Inspector of Police,
W-13 All Women Police Station,
Washermenpet, Chennai-600 021.
(Crime No.18 of 2020)

...Respondent/Respondent

Common Prayer:- Criminal Miscellaneous Petitions have been filed under Section 389 [1] of Cr.P.C., to suspend the sentence of the petitioners/A15 and A20 as issued vide a judgement dated 26.09.2022 in Special S.C.No.12 of 2021 in the Court of the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai, pending disposal of the Criminal Appeal.

For Petitioner
in Crl.M.P.No.5791 of 2024 : Mr.G.Prabhakaran

For Petitioner
in Crl.M.P.No.7011 of 2024 : Mr.T.Geethann Kishore

For Respondent
in both Crl.M.Ps. : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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COMMON ORDER

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

Though the above petitions were listed as different matters in the cause list since both the petitions are interconnected, with the consent of the learned counsel appearing for the parties, these petitions were heard together and disposed of by this common order.

2. The petitioners, who are arrayed as A15 & A20 in the above Sessions Case, were convicted and sentenced as follows:

Accused No.	Offence under Section	Sentence imposed
A-15	6 r/w 5(1) of POCSO Act @ 4 r/w 3 of POCSO Act	Accused sentenced to undergo twenty years of imprisonment and to pay a fine of Rs.50,000/- in default to undergo three months of simple imprisonment.
A-20	6 r/w 5(g) of POCSO Act @ 4 r/w 3 of POCSO Act	Accused sentenced to undergo twenty years of imprisonment and to pay a fine of Rs.5,000/- in default to undergo one month of simple imprisonment.
		Sentences are directed to run concurrently.



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3. Challenging the above conviction and sentence, the petitioners, have filed the above Criminal Appeals and they seek suspension of sentence and bail in the present miscellaneous petitions.

4. Heard Mr.G.Prabhakaran and Mr.T.Geethann Kishore, learned counsel appearing for the petitioners and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, appearing for the respondent/Police.

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; 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 petitioners herein are arrayed as A15 and A20.

6. The learned counsel for the petitioners submitted that the petitioners' name were not found in the FIR or in Section 164 Cr.P.C.



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statement given by the victim; that except for the identification of the petitioners by the victim, there is no other evidence to connect the petitioners with the alleged offence; that the identification is doubtful; that the petitioners are in custody from 26.09.2022 right from their day of arrest; and since the appeals are not likely to be taken up in the near future, they prayed for suspension of sentence.

7. Learned Additional Public Prosecutor, per contra, submitted that there is evidence to show that the petitioners were identified by the victim and the trial Court was right in convicting the petitioners and prayed for dismissal of the petitions for suspension of sentence.

8. By an order dated 27.03.2024 in Crl.M.P.No.4121 of 2024 in Crl.A.No.90 of 2024, we have considered the case of A16 and granted suspension of sentence to him by making the following observations:-

..... *“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



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

9. The aforesaid observations will squarely apply to case of the petitioner/A15 and A20 herein as well, as they stand on the same footing. Therefore, in view of the above and considering the fact that the petitioners are in custody from 26.09.2022 and the appeals are not likely to be taken up in the near future, we are inclined to grant the relief of suspension of sentence to the petitioners herein/A15 and A20.



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10. Accordingly, these Criminal Miscellaneous Petitions stand **allowed** and the sentence imposed on the petitioner/A15 and A20 is suspended on the following conditions:-

- (i) The petitioners shall execute a bond for a sum of Rs.25,000/- each, with two 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 petitioners 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;
- (iii) The petitioners shall appear before the trial Court on the first working day of every month at 10.30 a.m., until the disposal of the appeals and if they are not able to appear before the trial Court on any 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 his absence, as directed by the



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trial Court.

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

[M.S.R.,J.] [S.M.,J.]
28.06.2024

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Issue order copy by 02.07.2024

Upload the order copy forthwith.

Internet: Yes



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- 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-600 021.
- 3.The Superintendent of Prisons,
Central Prison, Puzhal, Chennai.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.

M.S.RAMESH, J.



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and
SUNDER MOHAN, J.

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