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Crl.M.P.No.7361 of 2024
in Crl.A.No.498 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2024

CORAM:

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

Crl.M.P.No.7361 of 2024

in

Crl.A.No.498 of 2024

Suresh

... Petitioner/Accused

Vs.

State Rep. by

The Inspector of Police,

All Women Police Station,

Perambalur,

Perambalur District.

(Crime No.9 of 2017)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) and 439 of Code of Criminal Procedure, to suspend the sentence and grant bail to the petitioner / appellant for the conviction and sentence imposed in Spl.S.C.No.4 of 2018 dated 06.12.2023 on the file of the Mahila Court, Perumbalur pending disposal of the above said Criminal Appeal and enlarge the petitioner on bail.

For Petitioner : Mr.K.Gandhi Kumar

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 Spl.S.C.No.4 of 2018 vide judgment dated 06.12.2023 on the file of Mahila Court, Perumbalur and enlarge the petitioner on bail, pending disposal of the above criminal appeal.

2.The petitioner/Accused was convicted by the trial Court in Spl.S.C.No.4 of 2018 by judgment dated 06.12.2023 and sentenced to undergo 20 years rigorous imprisonment and to pay a fine of Rs.50,000/-, in default to undergo 2 years rigorous imprisonment for offences under Section 5(m) of POCSO Act 2012 r/w Section 6 of POCSO Act. Aggrieved against the conviction, the petitioner preferred an appeal in Crl.A.No.498 of 2024 before this Court along with petition seeking suspension of sentence and bail.

3.During trial, on the side of the prosecution, PW1 to PW16 examined, Exs.P1 to P13 marked and M.O.1 to M.O.6 marked. On the side of



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the defence, DW1 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 and the PW3 are neighbours who are known to the victim PW1 and PW2. There is a dispute between the petitioner and his neighbour and there were also police complaint in this regard. PW2 who is the victim had alleged false complaint stating that the petitioner had taken the victim girl to isolated place and committed penetrative sexual assault. The Doctors who were examined as PW9 and PW13 had given the medical report as Ex.P5 and Ex.P7. From the medical report and evidence of PW9 and PW13 confirms that no injuries were found on the victim girl and hymen was found intact. He would further submit that PW1 who is the sister of victim has been projected as an eyewitness to the occurrence, despite not being present at the scene.



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During the search of her sister, PW3 is stated to have informed that she saw the petitioner and the victim together. Later, the victim had come home and explained about she subjected to penetrative sexual assault and also pain. Admittedly, Doctor PW9 admits that there was no complaint of pain and no changes in the walk or behaviour of the victim girl. Thus, the petitioner, who had a dispute with PW3, has been falsely implicated in this case, as seen from the evidence presented by the prosecution. The evidence of PW2, the victim, does not corroborate with the medical evidence, which was overlooked by the Trial Court. Therefore, he requests the granting of suspension of sentence for the petitioner.

5.The learned Government Advocate (Crl. Side) filed his counter and submitted that PW1 is the sister of the victim who lodged the complaint. The victim is aged about 13 years and studying VII standard at Kuthoor Government Higher Secondary School. On 18.06.2017, the victim girl went outside to play and did not return home. While PW1 was searching for her



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sister, PW3 informed her that she had seen the petitioner and the victim together. When the victim was questioned, she stated that she had been playing near the banyan tree and the petitioner followed her and forcibly taken her to the place and had committed penetrative sexual assault and threatened the victim girl not to disclose his acts of sexual assault to anyone else, if she discloses it, he would kill her and her father. Based on the complaint given by the sister of the victim, a case has been registered in Crime No.9 of 2017 for the offence under Section 5(1) 6 of POCSO Act 2012 and 506(i) of IPC on 19.06.2017. During the investigation, the Section was altered into 5(i) 6 of POCSO Act 2012 and Section 506(i), 376(2)(h), 376(2)(m) of IPC. He further submitted that during trial, PW1 to PW16 examined, Exs.P1 to P13 marked and M.O.1 to M.O.6 marked and on the side of the defence, DW1 examined. The trial Court on the evidence of the witnesses had rightly convicted the petitioner. Hence, prays for dismissal of the petition.



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6. Considering the submission and perusal of records, it is seen that there is a variation in the deposition of PW1 with regard to place of occurrence. Further, PW3 admits that there was a dispute with the petitioner for the past 5 years. The petitioner also lodged complaint however, due to the intervention of village elders,, the complaint was not pursued. Further, there is a variation between her statement recorded under Section 161(3) of the Cr.P.C. and her deposition before the Trial Court as PW1. Although she is projected as an eyewitness, she did not mention this version in her 161(3) statement. Admittedly, in this case, the victim's statement is contraction to the medical evidence provided by PW9 and PW13 as Exs.P5 and P7. In view the above, 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



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Rs.10,000/- (Rupees Ten thousand only) with two sureties, each for a like sum to the satisfaction of the trial Court.

8.Further, the petitioner shall appear before the Trial Court once in three months 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.

25.09.2024

Index : Yes/No

Speaking order / Non-speaking order

Neutral citation : Yes/No

shk



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To

- 1.The Inspector of Police,
All Women Police Station,
Perambalur,
Perambalur District.
- 2.The Mahila Judge, Perumbalur
- 3.The Superintendent of Prison,
Central Prison,
Trichy.
- 4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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