



Crl.MP.No.8162/2023 in Crl.A.No.635/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.02.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.8162/2023 in Crl.A.No.635/2023

Pugazhenth

.. Petitioner

Versus

The State by Inspector of Police,
W-13, All Women Police Station,
Washermenpet, Chennai-600 021

.. Respondent

Prayer:-Civil Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the execution of sentence pending disposal of the Criminal Appeal preferred by the petitioner against the judgement dated 26.09.2022, passed in S.C.No.12 of 2021 by the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai, and thereby, to release the petitioner on bail.



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For Petitioner : Mr.M.Velmurugan
For Respondent : Mr.E.Raj Thilak
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 intension to earn money from prostitution,



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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 A11.

3. Heard the learned counsel for the petitioner [A11] 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 was not identified in Court by the victim, however, his name was only referred to by the victim pursuant to the questions put by the learned trial Judge during the cross examination made by the counsel of A10. He, therefore, submitted that the petitioner is entitled for suspension of sentence as he has a fair chance of success in the appeal.

5.Learned Additional Public Prosecutor, per contra, submitted that



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there is evidence to show that the petitioner was involved in the offence and the trial Court was right in convicting the petitioner, and prayed for dismissal of the petition for suspension of sentence.

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

7. It is seen from the evidence of P.W.2 that she was unable to identify the petitioner in Court. However, during the cross examination made by the counsel of A10, the trial Judge had put certain questions and by referring to the name of the petitioner asked the victim as to whether she knew the petitioner, to which, the victim answered in the affirmative. However, the victim did not identify the petitioner even then. Considering the nature of evidence as against the petitioner, we are of the view that the petitioner has a fair chance of success in the appeal.



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8. In view of the above facts, and since the petitioner is in custody from 23.11.2020, 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.

9. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment is **suspended** and the sentence imposed on the petitioner 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



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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.

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

22.02.2024

(2/3)

Anu

Issue order copy by 23.02.2024

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-600 021

3.The Superintendent of Prison,
Central Prison-I, Puzhal, Chennai.

4.The Public Prosecutor,



Madras High Court,
Chennai – 600 104.



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M.S.RAMESH, J

and

SUNDER MOHAN, J

Anu

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