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Crl.M.P.No.9135 of 2023
in
Crl.A.No.694 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 6/12/2024

C O R A M

THE HONOURABLE Mr.JUSTICE SUNDER MOHAN

Crl.M.P.No.9135 of 2023

in

Crl.A.No.694 of 2023

Thavamani

...

Petitioner

Vs

The State
rep. By The Inspector of Police
W-15 All Women Police Station
Royapuram
Chennai 600 013.

...

Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (1) (2) and (3) of the Code of Criminal Procedure to suspend the sentence of punishment imposed vide order dated 7/12/2022 passed by the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Chennai in Sessions Case No.399 of 2019, pending disposal of the Criminal Appeal.

For petitioner

...

Mr.P.Balamurugan



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For respondent ... Dr.C.E.Pratap
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence of punishment imposed vide order dated 7/12/2022 passed by the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Chennai in Sessions Case No.399 of 2019, pending disposal of the Criminal Appeal.

2. The case of the prosecution is that the petitioner is the maternal uncle of the father of the victim child; that since he had a share in the house where the parents of the victim child resided, he used to come and stay in that house; that whenever, he came to the house, mother of the victim child along with the victim child would go to her sister's house which is situated opposite to their house; that on 13/8/2019, at about 1 p.m., when the victim child went to their house alone to take her doll, she did not return for a long time and when P.W.1 went to the house, she saw the victim was lying on the ground and the appellant had his hand on the private part of the victim and



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that when the mother asked the child, child replied by way of gestures that the grand father viz., petitioner had touched the private part. The learned Special Judge, convicted the appellant for the offence under Section 6 of POCSO Act with alternative charge under Section 376 (AB) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 20 years with a fine of Rs.10,000/- in default to undergo simple imprisonment for 3 months.

3. The learned counsel appearing for the petitioner would submit that this is a false case; that there is a property dispute with the petitioner and the victim's father and in order to wreak vengeance, this complaint has been lodged; that evidence of the Doctor would show that victim had not sustained any injuries in her private part; that the evidence of P.Ws.1 and 2 is false, motivated and cannot be believed; and that the petitioner is in custody from 7th December, 2022 and was in custody for a period of ten months, during the investigation and submitted that sentence may be suspended.

4. The learned Government Advocate would submit that prosecution had established this case beyond reasonable doubt and there is no reason to



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disbelieve the evidence of P.W.1, mother of the victim and that therefore, condition may be dismissed.

5. Admittedly, there is a property dispute between the petitioner and father of the victim child. The case of P.W.1 is that when she asked the victim child, the child replied by way of gestures to P.W.1 about what had happened. This Court has to examine as to whether the evidence of P.Ws.1 and 2 can be believed to convict the petitioner for such a serious offence under the POCSO Act, especially, in the light of the evidence of Doctor who has stated that there were no injuries on the private part of the victim child.

6. Considering the fact that the petitioner has raised substantial grounds and is in custody from 7th December, 2022, and the fact the appeal is not likely to be taken in near future, this Court is inclined to release the petitioner on bail on following conditions:-

7. Accordingly, this Criminal Miscellaneous Petition stands allowed and the sentence imposed on the petitioner, is suspended till the disposal of



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the Criminal Appeal and he is ordered to be released on bail on the following conditions:

(i)The petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only), with two sureties, each for a like sum to the satisfaction of the Special Judge 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;

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

SUNDER MOHAN, J

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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.

6/12/2024

mvs.

Index: Yes/No

Neutral Citation: Yes/No

To

1. The Special Judge for Exclusive Trial of Cases under POCSO Act,
Chennai
2. The Inspector of Police
W-15 All Women Police Station
Royapuram
Chennai 600 013.
3. The Superintendent, Central Prison, Puzhal.
4. The Public Prosecutor, Madras High Court.

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