



*Crl.M.P.No.10336 of 2024
in Crl.A.No.933 of 2024*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.10336 of 2024
in Crl.A.No.933 of 2024

Aruldoss

... Petitioner

Vs.

State Rep. by
The Inspector of Police,
All Women Police Station,
Mayiladuthurai.
(Crime No.17/2022)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C., to suspend the sentence imposed in Spl.S.C.No.67 of 2022 dated 19.01.2024 on the file of the Sessions Judge, Special Court under POCSO Act, Nagapattinam and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

For Petitioner : M/s.Vijayalakshmi
For Respondent : Mr.R.Vinothraja,
Government Advocate (Crl. Side)

ORDER

The petitioner/accused in Spl.S.C.No.67 of 2022 was convicted by the learned Sessions Judge, Special Court under POCSO Act, Nagapattinam by



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judgment dated 19.01.2024 and sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment for the offence under Section 8 r/w. 7 of Protection of Children from Sexual Offences Act [POCSO Act] and to pay a sum of Rs.3,00,000/- as compensation to the victim child P.W.1. Aggrieved against the same, the petitioner preferred the present criminal appeal and suspension of the sentence.

2.The contention of the learned counsel for the petitioner is that the petitioner and the victim girl/P.W.1 are neighbours. The case projected against the petitioner is that on 03.06.2022 when the victim girl was returning home through a lane near Madha Temple at about 12.00 noon, the petitioner is said to have given the victim girl a cycle and by holding the cycle the petitioner pinched the breast of the victim girl from her behind. Thereafter, the victim girl informed to her mother/P.W.2 who called the Village Panchayat and in the presence of P.W.6, panchayat was held wherein the petitioner admitted that he was under the influence of alcohol and not knowing anything about the incident and hence, sought pardon. But the



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same was not accepted and complaint was lodged. He would submit that except P.W.1/victim girl no other witness examined despite the case is that the occurrence took place in a public lane. The evidence of P.W.2 is that she saw some mark in the breast of the victim girl and hence, lodged a complaint, but the victim girl/P.W.1 not produced before the Doctor and no examination done and nothing unusual found. Further P.W.1 in her evidence stated that the petitioner pinched her cheek and pinching of cheek would not amount to sexual assault with sexual intent. Hence, prayed for suspension of sentence.

3.The learned Government Advocate (CrI. Side) submitted that the petitioner and the victim girl are neighbours. Taking advantage of the loneliness in the lane took the victim girl to an isolated place and committed sexual assault. The victim girl complained to her mother/P.W.2 and she lodged a complaint. Prior to it, village panchayat held, the petitioner admitted his guilt and pleaded that he had committed the sexual assault under the influence of alcohol. On the complaint, case registered, investigation conducted and on conclusion of investigation, charge sheet



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filed. During the trial, P.W.1 to P.W.10 examined, Ex.P1 to Ex.P13 marked on the side of the prosecution and on the side of the defence, no witness examined and no documents marked. Hence, prayed for dismissal.

4.Considering the submissions made and on perusal of the materials, it is seen that the petitioner and the victim girl are neighbours, it has been suggested that there is some dispute between the neighbours. The victim girl/P.W.1 claims that she was given a cycle and in the guise of petitioner giving training to the victim to ride a cycle, he touched her back and pinched her breast. P.W.2 also confirms that she saw some reddishness in the breast but surprisingly, in this case the victim was not taken to the hospital and no unusual mark was recorded in the body of the victim girl. The petitioner though claims that he was under the influence of alcohol, he was also not produced before the Doctor to prove the same. The victim girl/P.W.1 states that the petitioner pinched her cheek and nothing more. The petitioner is in prison from the date of conviction i.e. 19.01.2024. Hence, this Court finds that the conviction and sentence imposed by the Trial Court needs re-consideration.



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

6.Further, the petitioner shall appear before the Trial Court on the first working day of once in three months 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. Accordingly, this Miscellaneous Petition is ordered.

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cse



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To

- 1.The Inspector of Police,
All Women Police Station,
Mayiladuthurai.
- 2.The Sessions Judge,
Special Court under POCSO Act,
Nagapattinam.
- 3.The Superintendent,
Central Prison,
Cuddalore.
- 4.The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR., J.

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