



Crl.M.P.No.9848 of 2023
in Crl.A.No.730 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.9848 of 2023

in

Crl.A.No.730 of 2023

Perumal.V

... Petitioner /Accused

Vs.

The State represented by
The Inspector of Police,
Bhavani All Women Police Station,
Erode District.
(Crime No.05 of 2020)

... Respondent / Complainant

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C. praying to suspend the sentence imposed in judgment and conviction passed in Spl.S.C.No.28 of 2021 dated 29.05.2023 on the file of the learned Sessions Judge, Magalir Needhi Mandram, Fast Track Mahila Court, Erode and release the petitioner on bail pending criminal appeal.

For Petitioner : Mr.S.Bharanidharan

For Respondent : Dr.C.E.Pratap
Govt. Advocate (Crl.side)



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ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in Spl.S.C.No.28 of 2021 dated 29.05.2023 on the file of the learned Sessions Judge, Magalir Needhi Mandram, Fast Track Mahila Court, Erode and release the petitioner on bail pending disposal of the above Criminal Appeal.

2. The case of the prosecution is that the petitioner and the victim, aged about 14 years were known to each other and that when the victim on 13.03.2020 was returning from school in her bicycle, the petitioner called her to “Karumbukadu” and that he gave Rs.100/-, removed her dresses and committed penetrative sexual assault thrice by using a condom. On the complaint given by the mother of the victim, a case was registered on 15.03.2020 for offence under Section 6 of the Protection of Children from Sexual Offences Act (hereinafter 'POCSO Act'), 2012 in Crime No.05/2020.

3. The petitioner/accused in Spl.S.C.No.28 of 2021 was convicted by the Trial Court by judgment dated 29.05.2023 for the offence under Section 5(1), punishable under Section 6 of POCSO Act and sentenced to undergo rigorous



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imprisonment for 20 years and to pay a fine of Rs.5,000/-, in default, to undergo 3 months simple imprisonment. Aggrieved by the same, he filed Crl.A.No.730 of 2023 before this Court along with the instant miscellaneous petition seeking suspension of sentence and bail.

4.The learned counsel for the petitioner would submit that PW2, the mother of the victim turned hostile; that PW1 suffered from a mental disability and she had not identified the petitioner; that she had deposed that the statements made by her in Court as well as before learned Magistrate under Section 164 Cr.P.C. was on the tutoring of the police; that the other witnesses, namely, mahazar witnesses for seizure of the condom, turned hostile and that the conviction was based only on the DNA report, which was based on the comparison of the seminal stain in the condom said to have been recovered from the field and that of the petitioner; that since the recovery itself is doubtful, the said report cannot be the basis for conviction.

5.Learned Government Advocate (Crl. Side), on instructions would submit that the prosecution witnesses proved the case beyond reasonable doubts and therefore, there is no infirmity and sought for dismissal of the



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petition.

6. Heard the learned counsel for the petitioner as well as the learned Government Advocate (Crl.side) appearing for the respondent and perused the records.

7. On perusal of the records it is seen that PW2 turned hostile. Further, PW1 had not identified the petitioner and had also stated in the cross examination that her statement under Section 164 Cr.P.C. and her deposition was on tutoring of the police. That apart her deposition would indicate that she had not stated as to what exactly happened and had explained the occurrence by gesture. The other evidence relied upon by the prosecution is the report comparing the seminal stain in the condom with that of the petitioner. The recovery witnesses have turned hostile. In such circumstances, it has to be examined in the appeal as to whether PW1's evidence can be relied upon in the light of the above infirmity and whether the conviction can be rendered on the basis of DNA report alone. The petitioner is in custody from 29.05.2023.



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8. Taking into consideration, the submissions made by the learned counsel for the petitioner and finding force in the submissions, the period of incarceration of the petitioner; the fact that the appeal is not likely to be taken up in the near future, this court is inclined grant the relief of suspension of sentence to the petitioner.

9. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioner is suspended till the disposal of the above Criminal appeal and the petitioner 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/-, with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Magalir Needhi Mandram, Fast Track Mahila Court, Erode;
- (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 working day of every month at 10.30 a.m. until the disposal of



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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.

11.12.2024

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Issue order copy by 12.12.2024
Upload the order copy forthwith.

To

- 1.The Sessions Judge,
Magalir Needhi Mandram,
Fast Track Mahila Court, Erode.
- 2.The Superintendent,
Central Prison,
Coimbatore.
- 3.The Inspector of Police,
Bhavani All Women Police Station,
Erode District.
- 4.The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J.

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