



Crl.M.P. No. 10485 of 2024
in
Crl.A.No. 928 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2024

CORAM

THE HON'BLE MR. JUSTICE M. NIRMALKUMAR

Crl.M.P. No. 10485 of 2024

in

Crl.A.No. 928 of 2024

Kumar

..Petitioner

Vs.

State rep. by
The Inspector of Police,
Bangalapudur Police Station,
Erode District.

..Respondent

Prayer: Criminal Miscellaneous Petition under Section 389(7) of The Code of Criminal Procedure to suspend the sentence of imprisonment imposed on the petitioner by judgment dated 02.02.2024 made in S.C. No. 115 of 2023 on the file of Sessions Judge, Magalir Neethi Mandram, Fast Track Mahila Court and enlarge the petitioner on bail pending disposal of the above criminal appeal.

For Petitioner :: Ms. Vijayalakshmi K. Rajaratnam

For Respondent :: Mr.R. Vinothraja,
Govt. Advocate (Crl.Side)



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ORDER

The petitioner/accused in Special S.C. No. 115 of 2023, by judgment dated 02.02.2024, was convicted by the Trial Court for offences under Section 366 IPC and Sections 9(m), 9(l) punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' in short) and in respect of the each of the offence, the petitioner was sentenced to undergo 7 years rigorous imprisonment together with a fine of Rs.3000/- carrying a default sentence of 3 months simple imprisonment.

2(i). The contention of the learned counsel for the petitioner is that the petitioner and the victim girl were neighbours. There was some dispute between the two families due to which a false case has been foisted against the petitioner. According to the learned counsel, the petitioner was friendly with the victim girl as an elderly person and not otherwise. The victim girl used to complain to the petitioner about how her parents treat her and the petitioner used to advise her. This had infuriated the parents of the victim girl resulting in a false case being foisted on the petitioner. Later on, realising the mistake, P.W.s 1 and 4/parents of the victim girl had not stated anything against the petitioner. The victim girl, at the time of her earlier examination by the learned Magistrate and Doctor, was forced to state



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against the petitioner as though the petitioner had touched her inappropriately and committed penetrative sexual assault. P.W.7, the Doctor, who had examined the victim girl and recorded her statement, on medical examination, had given a report Ex.P13 stating that the victim girl was not subjected to any sexual assault. The learned counsel for the petitioner would further submit that though initially, the petitioner was charged under Sections 5(m) 5(l) punishable under 6 of POCSO Act, later, the section of offence was altered to Sections 9(m) and 9(l) of POCSO Act. The date of birth of the victim girl is 06.02.2011 and on the date of occurrence, she was aged 13 years. Hence, learned counsel submitted Section 9 would not get attracted and it cannot be stated that the petitioner committed any aggravated sexual assault.

2.(ii) Further, according to the learned counsel, the case projected against the petitioner is that the petitioner was constantly talking with the victim girl over mobile phone. The evidence of P.W.4, the father of the victim girl is that the mobile phone was handed over to the Police, on the other hand, evidence of P.W.1 is to the contrary, confirming mobile phone not given to the Police. Moreover, the mobile phone on which the entire case rests not produced. Learned counsel would also submit that the mother of



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the accused, Rajamani, was examined as D.W.1 to prove that on 28.04.2023, the petitioner was at home and not at the temple as projected by the prosecution and this evidence not seriously challenged by the prosecution. The learned counsel for the petitioner submitted that the Trial Court failed to consider these vital contradictions. Hence, the learned counsel for the petitioner would pray for grant of suspension of sentence and bail.

3. Learned Government Advocate (Crl.Side) has filed his counter and submitted that on the complaint of P.W.1, mother of the victim girl, a case in Crime No. 122 of 2023 was registered initially for ‘ Girl Missing’ and later on, it was altered to one under Section 366 IPC and Sections 9(m), 5(l) r/w 6 of POCSO Act. He would submit that the petitioner and victim girl are neighbours and on 04.02.2023, the petitioner had called the victim girl, removed her dress and committed aggravated sexual assault. Thereafter, he had continued the same on several dates and on 28.04.2023, he had taken the victim girl to a nearby temple, induced her to get married to him and he had also tied a ‘*thali*’. They stayed whole night in the temple and petitioner committed aggravated sexual assault. On the complaint given, the

<https://www.mhc.tn.gov.in/jsp/online.jsp> independent Police found the petitioner and the victim girl in the temple,



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secured the victim girl, recorded her statement and produced her for medical examination. She was thereafter produced before the learned Magistrate and her 164 Cr.P.C. statement recorded wherein she had confirmed the act of the petitioner/accused. The petitioner was arrested and on completion of investigation, charge sheet filed in this case. During trial, P.Ws. 1 to 11 examined and Exs.P1 to P20 marked. On the side of the defence, the mother of the petitioner, namely, Rajamani, examined as D.W.1 and one exhibit marked. Learned Government Advocate submitted that based on the medical evidence and the statement of the victim girl recorded, the petitioner has been rightly convicted and therefore, prayed for dismissal of the petition.

4. Considered the submissions made on both sides and perused the materials on record.

5. It is seen that the petitioner and the victim girl are neighbours. P.W.s 1 and 4, parents of the victim girl, have not stated anything against the petitioner. P.W.7, Doctor, who examined the victim girl had recorded an exaggerated version given by the victim as though penetrative sexual assault had been committed. The medical report, Ex.P13 given by the Doctor



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confirms that there was no sexual assault. There is no evidence to prove that the petitioner was found in the temple along with the victim girl and no one from the temple or from nearby place examined to confirm the abduction, seen together the whole night. On the other hand, the evidence of D.W.1, the mother of the petitioner, is that the petitioner was at home and not at the temple on the date of alleged occurrence which is not seriously challenged by the prosecution. Added to it, there is no seizure of mobile phone, which is the fulcrum of the entire prosecution case. The medical evidence and records are contrary to the ocular evidence, confirming the exaggeration and contradictions. In view of the same, this Court is of the view that the conviction of the petitioner needs to be reconsidered. Hence, this Court is inclined to suspend the sentence and enlarge the petitioner on bail.

6. Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal Appeal:

(a) The petitioner/accused 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



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sum to the satisfaction of the Fast Track Mahila Court, Erode.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Trial Judge may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioner shall appear before the Trial Court on the first working day of every English Calendar 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 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.

M. NIRMALKUMAR,J.

nv

7. Accordingly, this Criminal Miscellaneous Petition is ordered.

19.10.2024

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To



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2. The Inspector of Police,
Bangalapudur Police Station,
Erode District.

3. The Public Prosecutor,
High Court, Madras.

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