



Crl.MP.No.10777 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.MP.No.10777 of 2023
in Crl.A.No.776 of 2023

Manikandan

... Petitioner

Vs.

State Rep. by
Inspector of Police,
Nettapakkam Police Station,
Crime No.35 of 2019,
Puducherry.

... Respondent

PRAYER:

Criminal Miscellaneous Petition has been filed under Section 389(2) r/w 439 of Code of Criminal Procedure, to suspend the sentence imposed on the petitioner in Spl. S.C.No.64 of 2019 passed by the learned Special Judge for Exclusive Trial of Cases under POCSO Act at Puducherry by an order dated 21.06.2022 and enlarge the petitioner on bail pending disposal of the criminal appeal.

For Petitioner : Mr.Swamisubramanian

For Respondent : Mr.K.S.Mohandass
Assisted by Ms.N.Danalatchumy



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ORDER

This petition has been filed to suspend the sentence imposed on the petitioner in Spl. S.C.No.64 of 2019 passed by the learned Special Judge for Exclusive Trial of Cases under POCSO Act at Puducherry by an order dated 21.06.2022 and enlarge the petitioner on bail pending disposal of the criminal appeal.

2. The petitioner/accused was convicted by the Trial Court in Spl.S.C.No.64 of 2019 for the offences under Sections i) 366 IPC and sentenced to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.1000/-, ii) 342 IPC and sentenced to undergo 6 months Rigorous Imprisonment, iii) 506 (ii) IPC and sentenced to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.1000/-, iv) 10 of POCSO Act, sentenced to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- and v) 6 of POCSO Act, sentenced to undergo 10 Rigorous Imprisonment and to pay a fine of Rs.5,000/- and all the sentences imposed shall run concurrently.



WEB COURT

3. The contention of the petitioner is that he has been falsely implicated in this case. The alleged occurrence is said to have taken place on 24.05.2019 at about 8.00 am, but the complaint was lodged only on 04.06.2009 and no reason was given for such delay. The petitioner is not neighbour of the victim PW1. The petitioner used to visit his aunt regularly and at one point of time, he expressed his love towards her, and it was refused by PW1. On coming to know about the same, the mother of the victim got offended and filed false complaint against him.

4. In this case, the victim is said to have discussed about the penetrative sexual assault with PW4 and PW5, who are neighbours to the victim. PW2 stated that she was informed by PW4 about her sister's sexual assault. Since PWs.4 and 5 were called by the respondent Police for enquiry, it is clear that the Police themselves are not sure who had committed the sexual assault on the victim and the petitioner has been falsely implicated.

5. PW12 Doctor, who examined the victim girl had issued medical certificate Ex.P14 stating that there is no definite clinical and physical evidence suggestive of recent forceful sexual intercourse. In view of the



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above, the learned counsel for the petitioner prays for suspension of sentence.

6. The learned Additional Public Prosecutor has filed counter affidavit stating that at the time of the incident, the victim girl was aged about 13 years and she completed 8th standard. She normally play with the petitioner's sister children, who are residing in the same street and hence, the petitioner is familiar to her. The petitioner is in the habit of following any person, who is going to remote place for attending nature's call and make proposal to the ladies, who were found alone. Likewise, the victim girl, 10 days prior to 04.06.2019 went to attend nature's call, the petitioner followed her and threatened her and tried to remove her nighty, however she fled away from the scene. Thereafter, during the Temple Festival on 24.05.2019, at about 8.00 am when she went to attend nature's call, the petitioner followed her and threatened her with knife and removed her nighty. Thereafter, he inserted his fingers as well as penis into the vagina of the victim girl and committed penetrative sexual assault and also threatened the victim girl not to disclose the same to anyone, otherwise her family members



will be done away. After getting some confidence, the complaint was lodged with a delay. The victim's 164 statement as well as the evidence before the Trial Court clearly stated about the petitioner committed penetrative sexual assault. The medical examination of the victim girl was conducted 12 days after the said occurrence and that is the reason why there is no definite opinion by the Doctor. But the victim girl had clearly stated about the incidence.

7. Further during examination of the Doctor, the victim girl narrated the happenings, how she came to know about the petitioner and how she was taken to secluded place, where penetrative sexual assault was committed on her by the petitioner.

8. The points raised by the petitioner herein were already raised during trial and the Trial Court considered the same not convinced and convicted the petitioner. Therefore, the points raised by the petitioner can be considered only during the final hearing. The Trial Court while passing the judgment had considered the offence committed on the victim girl along with



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medical evidence and convicted the petitioner. The petitioner's period of incarceration cannot be a mitigative factor while considering bail application.

Therefore, at the time of final hearing, this Court is inclined to consider the points raised by the petitioner and hence, this petition is dismissed.

06.03.2024

Speaking order/Non-speaking order

Index: Yes/No

Neutral Citation: Yes/No

pvs

To

1. Special Judge for
Exclusive Trial of Cases under POCSO Act at Puducherry
2. Inspector of Police,
Nettapakkam Police Station,
Crime No.35 of 2019,
Puducherry.
3. The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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