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*Crl.M.P.No.11043 of 2024
in Crl.A.No.1000 of 2024*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.11043 of 2024 in
Crl.A.No.1000 of 2024

Selvakumar

... Petitioner

Vs.

State of Tamil Nadu,
Represented by the Inspector of Police,
Tiruvannamalai Police Station-Thellar,
Tiruvannamalai District.
(Crime No.774/2020).

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C., to suspend the sentence of imprisonment imposed by judgment dated 12.04.2024 made in Spl.S.C.No.113 of 2020 on the file of the Special Court for Trial of Cases under POCSO Act, Tiruvannamalai, Tiruvannamalai District pending appeal.

For Petitioner : Mr.N.S.Sivakumar

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



WEB COPY



*Crl.M.P.No.11043 of 2024
in Crl.A.No.1000 of 2024*

ORDER

The petitioner/accused in Spl.S.C.No.113 of 2020 was convicted by the Trial Court by judgment dated 12.04.2024 and sentenced to undergo twenty years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one year simple imprisonment for the offence under Section 375(b) IPC r/w.376(AB) IPC and Section 5(m) r/w. 6 of Protection of Children from Sexual Offences Act [POCSO Act]. 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 in this case the petitioner was falsely implicated. The petitioner was close with the defacto complainant/P.W.1/mother of the victim girl and he proposed to marry her which was not acceptable by the defacto complainant. But the petitioner insisted P.W.1 to marry him and to keep away the petitioner, he was implicated in a false case. He would submit that



*Crl.M.P.No.11043 of 2024
in Crl.A.No.1000 of 2024*

the defacto complainant using her minor daughter foisted a case against the petitioner. He would further submit that the evidence of P.W.1 is that the evidence of P.W.1 is with full of exaggeration and improvement which has not been considered by the Trial Court. As regards the aggravated penetrative sexual assault, there is no material and not supported with any medical evidence. P.W.4 is the Casualty Doctor who examined the victim girl and P.W.5 is the expert who had given opinion. Both the Doctors found hymen intact and there are no external injuries except for P.W.5 stating that there have been reddishness in the private parts of the victim but at the same time, P.W.5 accepts that this might due to infection. He further submitted that the alleged occurrence is said to have taken place on 07.04.2020 but the complaint was lodged on 11.05.2020 projecting the case as though the occurrence took place on 07.05.2020. Further in the Accident Register/Ex.P4, there is a correction with regard to the dates. The petitioner examined himself as D.W.1 and gave explanation as how he was falsely framed in this case. D.W.2 and D.W.3, who are the neighbours supported the petitioner. On the side of the prosecution, other than P.W.2/victim and her mother/P.W.1, no others in the Village examined as witness. In this



*Crl.M.P.No.11043 of 2024
in Crl.A.No.1000 of 2024*

case, the 164 statement of P.W.2 is clear that she entered the house of the petitioner, at that time, the petitioner's mother was there, the petitioner is said to have touched her private parts and she immediately ran away. The petitioner's mother was not examined as well as in her evidence, she only speaks about the sexual assault. But the Trial Court convicted the petitioner for penetrative sexual assault which is not sustainable.

3.The learned Government Advocate (Crl. Side) filed his counter and submitted that the victim and the petitioner belong to same Village. On 07.04.2020, due to Covid-19 situation, the Head of the Village distributed foods to the people in the Village, the victim went to the petitioner's house to bring a plate, the petitioner's mother stopped her and asked her to bring the plate from her house, at that time, the petitioner is said to have grabbed the victim's hand, hugged her and touched her private parts. P.W.1 lodged a complaint/Ex.P1. On receipt of the complaint, P.W.7 registered FIR/Ex.P8 in Crime No.774 of 2020. Thereafter, P.W.7 visited the scene of occurrence, prepared observation mahazar/Ex.P10 and rough sketch/Ex.P9 in the presence of witnesses and recorded their statement. On 11.05.2020, P.W.7



*Crl.M.P.No.11043 of 2024
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arrested the accused. On completion of investigation, charge sheet filed.

During trial, P.W.1 to P.W.8 examined and Ex.P1 to Ex.P.15 marked on the side of the prosecution and on the side of the defence, D.W.1 to D.W.3 examined and no documents marked. On conclusion of trial, the Trial Court had rightly convicted and sentenced the petitioner as stated above. Hence, prayed for dismissal.

4.Considering the submissions made and on perusal of the materials, it is seen from the evidence of P.W.2/victim, P.W.4 and P.W.5, who are the Doctors, Accident Register/Ex.P4 and medical opinion/Ex.P6 that there is no material for penetrative sexual assault. Hence, this Court finds that the conviction and sentence imposed by the Trial Court for the offence under Section 375(b) IPC r/w.376(AB) IPC and Section 5(m) r/w. 6 of POCSO Act needs re-consideration.

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



*Crl.M.P.No.11043 of 2024
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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.

11.09.2024
(2/2)

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*Crl.M.P.No.11043 of 2024
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To

- 1.The Inspector of Police,
Tiruvannamalai Police Station-Thellar,
Tiruvannamalai District.
- 2.The Sessions Judge,
Special Court for Trial of Cases under POCSO Act,
Tiruvannamalai, Tiruvannamalai District.
- 3.The Superintendent,
Central Prison,
Vellore.
- 4.The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR., J.

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Crl.M.P.No.11043 of 2024 in
Crl.A.No.1000 of 2024

11.09.2024
(2/2)