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Crl.M.P.No.11783 of 2024 in Crl.A.No.1070 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.11783 of 2024

in

Crl.A.No.1070 of 2024

Jakir Hussaine

... Petitioner/Sole Accused

Vs.

The State Rep. by

The Inspector of Police,

Odiansalai Police Station, Puducherry.

(Cr.No.22/2021)

... Respondent

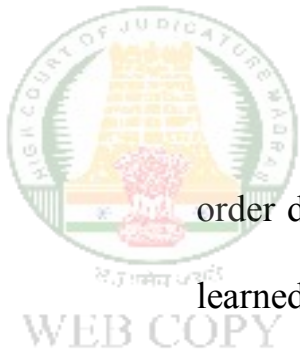
PRAYER: Criminal Miscellaneous Petition filed under Section 389 (1) Cr.P.C., to suspend the sentence imposed in Spl.S.C.No.88 of 2023 dated 13.03.2024 on the file of the learned Sessions Judge, Fast Track Court (POCSO Act), Puducherry and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.C.Santhosh Kumar

For Respondent : Mr.M.V.Ramachandramoorthy
Additional Public Prosecutor (Puducherry)

ORDER

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner/accused by judgment and



order dated 13.03.2024 passed in Spl.S.C.No.88 of 2023 on the file of the learned Sessions Judge, Fast Track Court (POCSO Act), Puducherry and to enlarge the petitioner on bail pending disposal of the appeal.

2. (i) The case of the prosecution is that on 27.12.2020 and 21.01.2012 during night hours at the house of the victim, the accused who was known to the family of the victim, a male child aged about 11 years had shown pornographic videos to the victim child and committed penetrative sexual assault by inserting his penis inside the anus of the victim minor child; that subsequently on 16.02.2021, again the accused took the minor child inside the room and committed penetrative sexual assault; and that when the mother of the victim [PW1] asked as to what happened inside the room, the victim is said to have told his mother that the accused had shown pornographic videos and committed penetrative sexual assault.

(ii) It is the further case of the prosecution that on coming to know of the occurrence, PW1 had informed about the occurrence to the Child Helpline and thereafter, an FIR was lodged on 26.02.2021.



3. The petitioner, was convicted by the trial Court for the offences under Sections 12 of POCSO Act, 2012 and Section 6 of POCSO (Amendment) Act, 2019 and sentenced as follows:

Offence under Section	Sentence imposed
12 of POCSO Act, 2012	To undergo RI for three years and to pay a fine of Rs.2,000/-, in default to undergo SI for three months.
6 of POCSO (Amendment) Act, 2019	To undergo RI for twenty years and to pay a fine of Rs.2,000/-, in default to undergo SI for three months.
The sentences are ordered to run concurrently.	

4. Heard Mr.C.Santhosh Kumar, learned counsel for the petitioner and M.C.Ramachandramoorthy, learned Additional Public Prosecution (Puducherry) appearing for the respondent/State.

5. The learned counsel appearing for the petitioner would submit that the victim's father and the accused had business transactions and on account of that enmity, the petitioner was falsely implicated; that strangely, the father of the victim was not examined by the prosecution; that even as per the evidence of PW1-mother of the victim, she came to know of the occurrence on the very same day and no complaint was lodged for nearly 10 days; that the Doctor [PW13] had not clearly opined that the injuries in the anus of the victim, was due to penetrative sexual assault and he had



only recorded the statement of victim that he was subjected to penetrative sexual assault; that PW1 in her deposition had stated that the victim did not tell her about the incident immediately after coming out of the room and he had informed her about the incident one day later; that the victim-PW2 would state that he did not inform his mother for nearly three days; that therefore there are several infirmities in the prosecution case which raises a substantial doubt and would submit that substantial grounds have been raised in the appeal and the petitioner is in custody from 13.03.2024; and that therefore, the sentence imposed on the petitioner may be suspended.

6. The learned Additional Public Prosecutor (Puducherry) *per contra* submitted that the evidence of the victim is cogent and convincing and merely because there is delay in reporting the offence, it cannot be said that the petitioner is innocent and that the evidence of the victim is false and prayed for dismissal of the petition for suspension of sentence.

7. Admittedly, the petitioner is in custody from 13.03.2024. It could be seen from the evidence of PW1 that there are certain inconsistencies with her version given in the complaint and the deposition. There are also inconsistencies in the versions of PW1 and PW2 as regards the time and



manner of the offence. The father of the victim had also not been examined. The perusal of the evidence on record would show that there is force in the submission of the learned counsel for the petitioner.

8. Considering the submission made by the learned counsel for the petitioner, the period of incarceration and the fact that the appeal is not likely to be taken up in the near future, this Court is inclined to grant the relief of suspension of sentence to the petitioner.

9. Accordingly, this criminal miscellaneous petition stands **allowed**. The sentence imposed on the petitioner is suspended 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, Fast Track Mahila Court (POCSO Act), Puducherry;
- (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;
- (iii) The petitioner shall stay at Karaikal and report before the



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Town Police Station, Karaikal, everyday at 10.00 a.m, until further orders; and

(iv)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 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.

14.11.2024

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SUNDER MOHAN, J.

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To

1. The Sessions Judge,
Fast Track Court (POCSO Act), Puducherry.
2. The Inspector of Police,
Odiansalai Police Station,
Puducherry.
3. The Superintendent of Prisons,
Central Prison, Pondicherry.
4. The Public Prosecutor (Puducherry)
Madras High Court.

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