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*Crl.M.P.No.10422 of 2024
in Crl.A.No.948 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2024

CORAM:

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

Crl.M.P.No.10422 of 2024
in
Crl.A.No.948 of 2024

1.Kangayen

2.Vijayalakshimi

... Petitioners/Accused 1& 2

Vs.

The State rep. by
The Inspector of Police,
Arcot Taluk Police Station,
Vellore District.
(Crime No.214/2016)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 430 of Bharatiya Nagarik Suraksha Sanhita, 2023 to suspend the sentence imposed by learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thiruvannamalai dated 12.07.2024 passed in Spl.S.C.No.01 of 2019 till the disposal of Criminal Appeal and enlarge the petitioners on bail.

For Petitioners : Mr.S.N.Subramani

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



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioners, seeking to suspend the sentence imposed on them by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thiruvannamalai dated 12.07.2024 in Spl.S.C.No.01 of 2019 till the disposal of above Criminal Appeal and enlarge the petitioners on bail.

2.The petitioners/accused 1 & 2 in Spl.S.C.No.01 of 2019 were convicted by the Trial Court by judgment dated 12.07.2024. The first petitioner was convicted for the offence under Section 354(B) of I.P.C and Section 11 r/w 12 of POCSO Act and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three months rigorous imprisonment and for the offence under Section 67 of the Information Technology Act, to undergo three years rigorous imprisonment and to pay fine of Rs.5,000/-, in default, to undergo three months rigorous imprisonment. The sentences are directed to run concurrently. As against the second petitioner, she was convicted for the offence under Sections 12 r/w 17 r/w 18 of POCSO Act and sentenced to



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undergo 18 months rigorous imprisonment and to pay fine of Rs.2,500/-, in default, to undergo two months rigorous imprisonment. Aggrieved against the said judgment, they filed an appeal before this Court in Crl.A.No.948 of 2024 along with the instant miscellaneous petitions seeking suspension of sentence and bail.

3.The case projected against the petitioners/accused is that both were running a provision shop. On 08.07.2016, the victim's mother sent the victim girl to the shop for buying green chillies, at that time, the victim girl found Rs.100/- in the floor and she took the same, which was mistaken by the petitioners that the victim took cash from the cash box and both the petitioners took the victim girl inside the house and removed her clothing and captured the same in the Micromax Cell Phone. It is alleged that the victim's grandmother was informed by co-workers about circulation of photographs in social media, the victim's mother questioned the petitioners in this regard and thereafter enquired her daughter who was attending the school, she confirmed the incident and thereafter, complaint was lodged. PW5 received the complaint, registered FIR, visited the scene of occurrence, enquired witnesses, prepared observation mahazar and rough sketch, arrested the



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accused and seized M.O.1/Micromax phone. PW7 took up investigation, prepared alteration report and forwarded M.O.1 for forensic examination. PW8 gave Ex.P11/forensic report and PW10 filed the charge sheet.

4.During trial, on the side of the prosecution, PW1 to PW10 examined, marked Exs.P1 to P12 and M.O.1. On the side of the defence DW1 to DW7 examined but no exhibits marked. DW6 and DW7 are the petitioners herein. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, convicted the petitioners as stated above.

5.The contention of the learned counsel for petitioners is that the petitioners falsely implicated in this case. The victim girl took 100 rupees note from the cash box, as the petitioner had gone inside to get green chillies which was informed by DW1, the victim admits taking of money from cash box and she was doing so on several occasions, DW2 confirms the same, both DW1 and DW2 are the listed witnesses but not examined by the prosecution. To cover up theft committed by PW2/victim, a case is projected as though on 07.07.2016 and 08.07.2016 nude photos of the victim girl captured in the petitioner's mobile phone. It is seen that in this case complaint



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lodged only on 09.07.2016. No reason given for the delay of two days. The electronic evidence, E.P11 and M.O.1 cannot be relied for the reason that the petitioner uses button phone and never used camera phone with memory card. The forensic report/Ex.P11 is that photographs were taken on 07.07.2016 but the alleged occurrence according to the de-facto complainant is on 08.07.2016. Hence, the petitioners falsely implicated in this case. The prosecution not seriously disputed the evidence of DW1 to DW7. He further submitted that PW7/mother of the victim confirm victim taking money from the cash box and pleaded not to take action. M.O.1 in this case was seized in the presence of PW9 on 09.07.2016 through Ex.P9 mahazar but M.O.1 sent to forensic examined only on 31.01.2018 with a delay of six months. No explanation given in whose custody M.O.1 was kept till then and it was tampered proof. Ex.P11 is not a complete report. The trial Court not considering the fundamental flaws in the prosecution case, but had convicted the petitioners. Further submitted that the petitioners have arguable points and fair chance of success in this appeal. Hence, he prays for granting suspension of sentence to the petitioners.

6.The learned Government Advocate (Crl. Side) filed his counter and



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submitted that based on the above complaint, a case in Crime No.214 of 2016 for offence under Sections 342, 354(b) of IPC and 12 of POCSO Act registered on 09.07.2016. The police visited the scene of occurrence, during the course of investigation on 09.07.2016 at about 6.00 p.m., the accused were arrested. The mobile phone/M.O.1 seized from A1 and the same was sent to forensic lab for examination. The forensic report/Ex.P11 confirms that the photographs recorded in the phone of A1. He further submitted that the seizure mahazar/Ex.P9, which was prepared on 09.07.2016 confirms that the mobile phone was seized from A1. As regards A2, the victim's statement is that the second petitioner was present when the first petitioner captured photographs. Hence, prays for dismissal of the petition.

7.Considering the submissions made and on perusal of the materials, it is seen that the entire case revolves around capturing of victim's pictures in M.O.1/mobile phone of the first petitioner. PW2 is the victim girl, who on 08.07.2016 at about 7.00 a.m., said to have gone to the shop of the petitioners for buying green chillies, at that time, she found a 100 rupees note in the floor and informed the first petitioner about the same, who accused her of taking money from the cash box and to teach her a lesson, she was taken



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inside the house, her clothes removed and pictures captured in M.O.1.

DW1/Sulochana is said to have informed the petitioner about the victim girl taking the money from the cash box and leaving the place and she brought the victim girl to the petitioners' shop, informed about the same and when the victim was questioned, the victim admitted that she is committing the act for quite some time. At that time, altercation arose, PW7/mother of the victim pleaded to let off her daughter, DW2 was present at that time. Though DW1 and DW2 shown as listed witnesses but not examined by the prosecution. The evidence of DW1 and DW2 not seriously contested. PW7 admits incident happened on 08.07.2016, complaint was lodged on the next day i.e. 09.07.2016, PW5/Sub-Inspector of Police received the complaint, visited the scene of occurrence, enquired the witnesses, prepared observation mahazar and rough sketch, arrested the accused, recorded confession and M.O.1 seized in the presence of PW9/grandfather of the victim. The seized M.O.1/mobile phone forwarded to the forensic expert on 31.01.2018, there is considerable delay but no proper explanation given. From Ex.p11/forensic report, it is seen that there some pictures captured on 07.07.2016 and 08.07.2016 found the specific case of prosecution that occurrence took place on 08.07.2016. Hence, the genuineness of recording of the pictures and its



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retrieval becomes doubtful, coupled with the fact that M.O.1 was sent to the forensic examination with a delay of 6 months. It is to be seen that in this background, looking at the evidence of PW9/grandfather of the victim along with DW3/grandmother of the victim, DW3's evidence is that she does not know anything about the case which cannot be ignored. Added to it, the arrest, confession and seizure are highly doubtful. In this case, the evidence of DW1 and DW2 not properly considered by the Trial Court. Further, the case is that the first petitioner is said to have threatened the victim, her parents/PW1 and PW7 that the photographs captured in M.O.1 would be posted in social media and the evidence of PW7 is that she was informed by DW3 that her co-worker in Mahatma Gandhi National Rural Employment Guarantee Scheme enquired about her granddaughter's picture in the social media and she questions PW7 and thus, the case unfolds but neither pictures posted in the social media nor any person viewed the pictures examined as witness. Added to it, DW3/grandmother of the victim totally denies knowledge of the case and hence, the origination of the case becomes shakey and doubtful. Hence, this Court finds that the conviction of the petitioners needs reconsideration. Further taking note of the fact that there are arguable points involved in this appeal and it would take some time for the appeal to



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be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioners.

8. 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 petitioners/accused 1 and 2 are ordered to be enlarged on bail, on condition that they shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each, with two common sureties, for a like sum to the satisfaction of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thiruvannamalai.

(b) The petitioners/accused 1 and 2 and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the Sessions Judge may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioners 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 they are not able to appear before the Trial Court on that day, they shall make arrangements to file an application under Section



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317 Cr.P.C. and shall appear before the Trial Court
on any other day in lieu of the date of their absence
as directed by the Trial Court.

9. Accordingly, this Criminal Miscellaneous Petition is ordered.

14.08.2024

Index : Yes/No
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Speaking order/Non speaking order
Neutral citation : Yes/No
rsi/cse

Note: Issue order copy on 19.08.2024.



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To

- 1.The Inspector of Police,
Arcot Taluk Police Station,
Vellore District.
- 2.The Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act,
Thiruvannamalai.
- 3.The Superintendent,
Central Prison (Men),
Vellore.
- 4.The Superintendent,
Central Prison (Women),
Vellore.
- 5.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

rsi

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