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Crl.M.P.No.11498 of 2024 in Crl.A.No.1042 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.11498 of 2024
in Crl.A.No.1042 of 2024

Mariappan

... Petitioner/Accused

Vs.

State Rep. by
The Inspector of Police,
Thoppur Police Station,
Dharmapuri District.
(Crime No.290/2016)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (1) r/w 439 Cr.P.C., to suspend the sentence made in Spl.S.C.No.7 of 2023 dated 22.04.2024 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Dharmapuri and enlarge the petitioner on bail pending Criminal Appeal on the file of this Court in pursuance to the Crime No.290 of 2016 on the file of the respondent.

For Petitioner : Mr.V.Sakkarapani

For Respondent : Mr.C.E.Pratap
Government Advocate (Crl.Side)

ORDER

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner/accused by judgment and order dated 22.04.2024 passed in Spl.S.C.No.7 of 2023 on the file of the



Special Court for Exclusive Trial of Cases under POCSO Act, Dharmapuri, and to enlarge the petitioner on bail pending disposal of the appeal.

2. It is the case of the prosecution that the petitioner/accused and the victim aged about 17 years, at the time of the occurrence, were neighbours; that three months prior to the complaint, the petitioner told the victim that his wife had gone out and asked her to bring food for him; and that when the victim brought food for the petitioner, he had committed penetrative sexual assault and thereafter threatened her stating that he had taken pictures of her while taking bath and that he would expose it, if she did not accede to his demands for sexual intercourse; that subsequently, he had taken the victim to various places; and that she was away from the village for nearly six days; and that there was a commotion in the village due to the absence of the petitioner and the victim; and that subsequently, in the month of October 2016, a complaint came to be registered as against the petitioner.

3. The petitioner, was convicted for the offence under Section 366 IPC and sentenced to undergo 5 years R.I. and to pay a fine of



Rs.10,000/- in default to undergo 6 months S.I. and for the offence under Section 5(1) r/w 6 of POCSO Act and sentenced to undergo 10 years R.I. and to pay a fine of Rs.25,000/- in default to undergo 1 year S.I.

4. Heard Mr.V.Sakkarapani, learned counsel for the petitioner/accused and Mr.C.E.Pratap, learned Government Advocate (Crl.Side) appearing for the respondent/State.

5. The learned counsel appearing for the petitioner/accused would submit that the prosecution's case is highly doubtful; that according to the F.I.R, the occurrence took place in the house of the victim, whereas the evidence of P.W.1 and the other evidences on record would show that the occurrence took place at the house of the accused; that when the victim went missing for six days, the mother of the victim lodged a complaint before the respondent; and that P.W.5, grandfather of the victim had deposed that the victim had made a statement before the police that the accused was not responsible for the occurrence and that the threat of exposing the videos was also false since the Investigating Officer had admitted in his evidence that when the cellphone of the petitioner was seized, he did not find any obscene pictures or videos of the victim; that



the accused, as per the evidence of the doctor, was aged about 21 years, and the victim was 17 years and 8 months. He further submitted that the petitioner is in custody from 22.04.2024 and prayed for grant of suspension of sentence to the petitioner.

6. The learned Government Advocate (Crl. Side) *per contra* submitted that the Trial Court had convicted the petitioner on the basis of cogent evidence available on record and no ground has been made out for grant of suspension of sentence.

7. In support of the submissions made by the learned counsel for the petitioner/accused, the learned counsel took this Court through the evidence of the victim, the averments made in the F.I.R, the evidence of P.W.5 and the evidence of the Investigating Officer.

8. On a perusal of the above evidences, this Court finds force in the submission made by the learned counsel for the petitioner/accused as the petitioner has raised substantial grounds, which has to be examined in the appeal.



9. Therefore, considering the age of the victim, the infirmities pointed out by the learned counsel for the petitioner/accused and considering 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.

10. Accordingly, this criminal miscellaneous petition stands **allowed** and 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 Fast Track, Mahila Court, Dharmapuri;
- (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; and
- (iii) 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



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SUNDER MOHAN, J.

Anu

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
(2/2)

Anu

Issue order copy by 15 .11.2024

Upload the order copy forthwith.

To

1. The Special Court for Exclusive Trial
of Cases under POCSO Act, Dharmapuri

2.The Inspector of Police,
Thoppur Police Station,
Dharmapuri District.

3. The Superintendent of Prisons,
Central Prison, Salem.

4.The Public Prosecutor,
Madras High Court.

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