



WEB COPY



*Crl.M.P.No.11293 of 2024
in Crl.A.No.1029 of 2024*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.11293 of 2024

in

Crl.A.No.1029 of 2024

Sarathkumar

...

Petitioner /A.2

Vs.

State by the Inspector of Police,
W-02, All Women Police Station,
Kilpauk, Chennai.
(Crime No.02 of 2022)
Respondent/Complainant

...

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C and 430 of BNSS 2023, praying to suspend the sentence imposed against the petitioner by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai in Spl.S.C.No.127 of 2022 dated 01.07.2024 and enlarge the petitioner in bail, pending disposal of the above appeal.

For Petitioner : Mr.V.Murugesan

For Respondent : Dr.CE Pratap,
Govt. Advocate (Crl.side)



*Crl.M.P.No.11293 of 2024
in Crl.A.No.1029 of 2024*

WEB COPY

ORDER

This Criminal Miscellaneous Petition has been to suspend the sentence imposed against the petitioner by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai in Spl.S.C.No.127 of 2022 dated 01.07.2024 and enlarge the petitioner in bail, pending disposal of the above appeal.

2. The case of the prosecution is that the petitioner, arrayed as A.2 before the Trial Court had committed penetrative sexual assault on the victim and that he is said to have touched the private parts of the victim and on her breast inappropriately.

3. The petitioner/A.2 in Spl.S.C.No.127 of 2022 was convicted by the Trial Court by judgment dated 01.07.2024 for the offence under Section 6 @ 10 of POCSO Act, 2012 and sentenced to undergo Rigorous Imprisonment for 5 years with a fine of Rs.25,000/- in default to undergo simple imprisonment for 3 months. Aggrieved by the same, the petitioner/A.2 filed Crl.A.No.1029 of 2024 along with the instant miscellaneous petition seeking suspension of



*Crl.M.P.No.11293 of 2024
in Crl.A.No.1029 of 2024*

sentence and bail.

4. The learned counsel for the petitioner would submit that the entire prosecution case is false and that the trial Court ought not to have convicted the petitioner even for the offence of sexual assault; that the evidence of witnesses do not inspire confidence and that there are arguable points in the above appeal and prayed for suspension of sentence.

5. The learned Government Advocate (crl.side) appearing for the respondent, per contra, submitted that the evidence of the victim girl – PW3 is clear and cogent and the trial court had rightly convicted the petitioner and therefore the petitioner has not made out any case for suspension of sentence.

6. Heard the learned counsel for the petitioner as well as learned Government Advocate (crl.side) appearing for the respondent and perused the record.

7. The trial Court, after considering the evidence had convicted the petitioner for the offence of sexual assault, though he was originally charged for the penetrative sexual assault, since PW3 had not deposed about the



*Crl.M.P.No.11293 of 2024
in Crl.A.No.1029 of 2024*

penetrative sexual assault. The petitioner, therefore has been sentenced to 5 years imprisonment. The petitioner is in custody from 25.06.2024 and was in custody during the trial for a period of two months.

8. Considering the submissions made by the learned counsel for the petitioner that there are arguable points in the above appeal, this Court is inclined to grant the relief of suspension of sentence to the petitioner.

9. 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 learned Special Court for Exclusive Trial of Cases under POCSO Act, Chennai ;
- (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



WEB COPY



*Crl.M.P.No.11293 of 2024
in Crl.A.No.1029 of 2024*

(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 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.

20.11.2024

rg

Issue order copy by .11.2024
Upload the order copy forthwith.

To

1.The Sessions Judge,
Special Court for Exclusive Trial
of Cases under POCSO Act,
Chennai.

2. The Superintendent,
Central Prison,
Puzhal, Chennai.

3.The Inspector of Police,
W-02, All Women Police Station,
Kilpauk, Chennai.

4.The Public Prosecutor,
High Court,
Madras.



WEB COPY



*Crl.M.P.No.11293 of 2024
in Crl.A.No.1029 of 2024*



WEB COPY



*Crl.M.P.No.11293 of 2024
in Crl.A.No.1029 of 2024*

SUNDER MOHAN, J.

rgt

Crl.M.P.No.11293 of 2024
in Crl.A.No.1029 of 2024

20.11.2024