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Crl.M.P. No.11240 of 2024 in Crl.A.No.1021 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2024

CORAM

THE HON'BLE MR. JUSTICE M. NIRMAL KUMAR

Crl.M.P. No.11240 of 2024

in

Crl.A.No.1021 of 2024

E.Harikaran

... Petitioner

Vs.

The State rep. by
The Inspector of Police,
B-1, Arni Town Police Station,
Arni, Thiruvannamalai District.
(Crime No.312 of 2022)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (1) of Cr.P.C. / Section 430 (1) of Bharatiya Nagarik Suraksha Sanhita, 2023 to suspend the sentence imposed by Sessions Judge Cum Special Court for Exclusive Trial of Cases under POCSO Act, Thiruvannamalai, Thiruvannamalai District dated 05.07.2024 passed in Spl.S.C.No.132 of 2022 till the disposal of Criminal Appeal and enlarge the petitioner on bail.

For Petitioner : Ms.V.Divya Bharathi

For Respondent : Mr.R.Vinothraja

Government Advocate (Crl. Side)



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence imposed on him by the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thiruvannamalai, Thiruvannamalai District dated 05.07.2024 in Spl.S.C.No.132 of 2022 till the disposal of above Criminal Appeal and enlarge the petitioner on bail.

2. The petitioner / accused has been convicted by the Trial Court in Spl.S.C.No.132 of 2022 by its judgment dated 05.07.2024 for the offences punishable under Sections 294(b), 323, 354 (A), 354 (B), 506 (ii) of I.P.C. and Sections 8 and 12 of POCSO Act, 2012 and sentenced him as follows:

"i. Sentenced him to undergo 5 years rigorous imprisonment with fine of Rs.1,000/- I/d. 6 months Simple imprisonment under Section 354 A of IPC.

ii. Sentenced him to undergo 1 year rigorous imprisonment with fine of Rs.1,000/- I/d. 1 month Simple imprisonment under Section 323 of IPC.

iii. Sentenced him to undergo 4 years rigorous imprisonment with fine of Rs.1,000/- I/d. 6 months Simple imprisonment under Section 354 B of



IPC." Aggrieved against the said judgment, he filed an appeal before this Court in Crl.A.No.1021 of 2024 along with the instant miscellaneous petitions seeking suspension of sentence and bail.

3. The case projected against the petitioner / accused is that the petitioner and the victim girl (PW1) both hailing from Pudhukumar village, Arni. On 08.07.2024, there is a festival in Mariamman Temple in the said village. The victim girl was walking in the temple procession. When the procession was nearing the house of one Mani, the petitioner was stated to come in drunken state, abused and slapped the victim girl, grabbed her dupatta and touched her breast. The victim girl got humiliated and moved out of the procession and informed her mother regarding the same and thereafter, the villagers had gone in search of the petitioner and questioned him. The petitioner threatened the villagers, ran away from the scene and later complaint was lodged. The respondent Police (PW10) received the complaint and filed F.I.R. in Crime No.312 of 2022 (Ex.P10). The Investigating Officer (PW11) took up the case and went to the scene of occurrence, examined the witnesses, drew rough sketch and gathered other documents and filed charge sheet against the petitioner.



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4. During trial, on the side of the prosecution, PW1 to PW11 examined, marked Exs.P1 to P13. On the side of the defence, DW1 examined, marked Exs.D1 and D2. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, convicted the petitioner as stated above.

5.The contention of the learned counsel for petitioner is that the petitioner falsely implicated in this case. The petitioner earlier met with an accident and the femur bone of both his legs got crushed and steel rod replaced. The petitioner due to this, cannot walk fast or run. Prior to this incident, there was some dispute between the petitioner's brother and the victim girl's brother, police complaint lodged. But, later both of them were warned and let off. This victim girl and her family took this opportunity and lodged a false case against the petitioner. It is further submitted that the incident occurred on 08.07.2024 but the complaint lodged on 13.07.2024. No reason given for the delay. PW1 admits that on 10.11.2022, her uncle gone to the house of the petitioner and assaulted the mother of the petitioner and a complaint lodged against her uncle. In defensive, the above case has



been lodged. The trial Court not considering the foundational flaws in the prosecution case, had convicted the petitioner. Further submitted that the petitioner has arguable points and fair chance of success in this appeal. Hence, he prays for granting suspension of sentence to the petitioner.

6.The learned Government Advocate (Crl. Side) filed his counter and submitted that based on the complaint given by PW1, the case was registered by the respondent Police in Crime No.312 of 2022 for the offences punishable under Sections 294(b), 323, 354 (A), 354 (B), 506 (ii) of I.P.C. and Sections 8 and 12 of POCSO Act, 2012. On 13.07.2024 at about 17:00 hrs, the Inspector of Police inspected at the scene of occurrence, examined the witnesses, drew rough sketch and gathered other documents and thereafter filed charge sheet in this case. The Trial Court had examined the witnesses and convicted the petitioner as stated above. Hence, prays for dismissal of the petition.

7.Considering the submissions made and on perusal of the materials, it is seen that the occurrence is stated to have taken place on 08.07.2024, but the F.I.R. came to be registered only on 13.07.2024. DW1 is the mother of



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the petitioner, whose evidence is that she was assaulted by the PW1's / victim girl's uncle and their relatives. She lodged a complaint and F.I.R. registered. Exs. D1 and D2 are the documents produced. It is seen that PW1 admits that her uncle gone to the house of the petitioner, where there was fight and exchange of blows and petitioner's mother was beaten. These facts not considered by the Trial Court. In addition to this, the petitioner is a physically challenged person, unable to walk fast or run. The case of the prosecution is that no one in the procession witnessed the assault and no one examined as witness. Other villagers who were examined not supported the case of the prosecution. PW2 is the mother of the victim and PW3 a neighbour. Their evidence is in the nature of hearsay. In this case, except for evidence of PW1, which is a motivated complaint, there is no other material against the petitioner. The Trial Court based on the evidence of PW1, convicted the petitioner. The case of the prosecution is that on seeing the PW1, PW2 and others, the petitioner ran away, which creates doubt in the case of the prosecution. Hence, this Court finds that the conviction of the petitioner 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 be taken up for final hearing, this Court is inclined to suspend the



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sentence imposed on the petitioners.

8. In view of the above observations, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal appeal:

(a) The petitioner /accused is ordered to be enlarged on bail, on condition that he 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, Thiruvannamalai District.**

(b) The petitioner / accused 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 petitioner 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



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Section 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.

22.08.2024

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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To

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

2.The Superintendent, Central Prison at Vellore, Periyar Nagar, Ramset Nagar, Thorapadi, Vellore, Tamil Nadu 632 002.

3.The The Inspector of Police,
B-1, Arni Town Police Station,
Arni, Thiruvannamalai District.

4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR. J.,

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