



Crl.M.P.No.11533 of 2024
in Crl.A.No.154 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2024

CORAM:

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

Crl.M.P.No.11533 of 2024

in

Crl.A.No.154 of 2024

Agustin

S/o.Samuvel

... Petitioner/Accused

Vs.

The Inspector of Police,
W-9, All Women Police Station,
Villivakkam, Chennai.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 430(1) of Bharatiya Nagarik Suraksha Sanhita, to suspend the order of conviction and sentence dated 21.12.2023 imposed upon the appellant herein by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai in Special Sessions Case No.226 of 2023 and enlarge the petitioner on bail till the disposal of the above criminal appeal.

For Petitioner : Mr.R.C.Paul Kanagaraj

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 order of conviction and sentence dated 21.12.2023 imposed upon the petitioner/appellant herein by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai in Special Sessions Case No.226 of 2023 and enlarge the petitioner on bail till the disposal of the above criminal appeal.

2.The petitioner/Accused in Spl.S.C.No.226 of 2023 was convicted by the trial Court by judgment dated 21.12.2023 and sentenced to undergo twenty years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one month simple imprisonment for offence under Section 6 of POCSO Act, against which, the petitioner preferred an appeal in Crl.A.No.154 of 2024 before this Court along with petition seeking suspension of sentence and bail.



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3. During trial, on the side of the prosecution, PW1 to PW9 examined and marked Exs.P1 to P6. On the side of the defence, no witnesses examined and no documents marked. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, had convicted the petitioner as stated above.

4. The contention of the learned counsel for petitioner is that the petitioner is working as a Warden in Sathkaria Home maintaining around 17 students as inmates. PW2 is one of the inmates, who lodged a complaint as though he was compelled to do penetrative sexual act on force and compulsion of the petitioner. The case projected is that on three occasions, i.e., on 02.05.2023, 03.05.2023 and 04.05.2023, the petitioner forced the victim boy to do the act and on 04.06.2023, he was forced to again repeat the act. The victim/PW2 contacted the Child Helpline through mobile phone and PW6 received the call. Thereafter, PW6 came along with PW1 and yet another investigator, enquires the victim, thereafter a complaint lodged. He



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was produced before the Child Welfare Committee, thereafter, the boy was shifted to Donbosco hostel. The respondent police on receipt of the complaint, registered F.I.R., investigated and filed charge sheet. In this case, the trial Court primarily relied on the evidence of PW2, The evidence is motivated, contradictory with exaggeration. PW2 earlier decided to leave the Sathkaria Home for the reason that he was supposed to be shifted to vocational training and not permitted to continue in regular education, since he was not a bright student. Further, PW2 was also interested to join his mother, who was in a different Home and both of them were to join one John. This was restricted by the petitioner.

4.1. Further, PW2 states that the incident has been witnessed by PW4/Doss and PW5/Maheshbabu. PW4/minor boy does not state anything against the petitioner, in fact, he supported the conduct and character of the petitioner being an aged person, who is concern and caring for PW2 considering his sufferings and background. PW5, a minor boy, who is also an



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inmate of the Home. His evidence is that PW2 on one occasion informed him that the petitioner misbehaved with him and forced to do the act on compulsion. His further statement is that PW4 questioned the petitioner and thereafter, petitioner refrained from calling PW2. PW4 does not state anything about the same. Added to it, PW5 admits that he does not believe the statement of PW2. In this case, PW2 admits that the entry and exist to the room of the petitioner is monitored, seen and recorded in CCTV camera, but in this case no CCTV recordings produced. PW4 on a specific question by the Court answers that he saw the victim boy sitting on the cot and watching the TV and that too on the edge of the cot.

4.2. Learned counsel further submitted that from the evidence of PW6, it is imperative that the petitioner ought to have been subjected to medical examination to prove his potency. The petitioner is an aged person of 73 years old, with health ailments and he had no such desire and capability of mental or physical thought of committing such act. The trial Court failed to



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consider all these aspects but merely gone by the evidence of PW2, which is with exaggeration. PW2 reprimanded by the Home Warden for the reason he stole Rs.500/- from one Rani, a maiden in the Home and took Gerny cycle without his knowledge and he also gave love letter to his classmates in 8th standard. These acts of PW2 strictly warned by the petitioner and PW2 also planned to shift to another hostel and change his course of study. For this reason, the petitioner falsely implicated in this case. Hence, without any corroborative materials from the other witnesses, convicting the petitioner is not proper. Further, no witness from Child Welfare Committee and the complaint to Child Welfare Committee, nothing produced. Further submitted that the conviction of the petitioner may not be sustainable. Hence, he prays for granting suspension of sentence to the petitioner.

5.The learned Government Advocate (Crl. Side) filed his counter submitting that the trial Court framed charges against the accused. During trial, the prosecution examined 9 witnesses and marked 6 exhibits to prove



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the case. He further submitted that after conclusion of due trial, the trial Court by its judgment in Spl.S.C.No.226 of 2023, dated 21.12.2023 convicted the appellant/accused and sentenced him to undergo 20 years rigorous imprisonment and imposed fine of Rs.5,000/-.

5.1. He further submitted that in this case from the act of the petitioner medical examination not required both for the victim as well as for the petitioner. The petitioner calling the boy alone to his room at late hours and forcing him to do massage for his leg pain and thereafter forcing him for penetrative sexual assault is proved by the evidence of PW2. The victim boy not lodged complaint immediately, after three occasions, when it became unbearable, he lodged a complaint. He called the child helpline, PW6 received phone call, thereafter, PW6, PW1 and one Manonmani had come to the Home. They examined the victim boy, enquired him and thereafter victim boy was produced before the Child Welfare Committee, shifted to Donbosco hostel for safety. Thereafter, the respondent police registered the complaint.



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PW2 in his evidence and statement under Section 164 Cr.P.C. narrated the sequence of events. Apart from PW2, Child helpline witnesses clearly deposed against the petitioner, as regards others they are either inmates or persons, who benefited of the Sathkaria Home. Hence, not stated the true facts. In fact, PW4 was treated hostile. In this case, PW5 is another minor boy, who studying along with PW2, corroborates the evidence of PW2 about PW2 visit to the petitioner's room at late night. The trial Court finding the evidence of PW2 trustworthy rightly convicted the petitioner. Hence, prays for dismissal of the petition.

6.Considering the submissions made and on perusal of the materials available on record, it is seen that the except PW2, no other witnesses stated against the petitioner of committing the act of penetrative sexual assault on PW2. In this case, PW1 admits that on receipt of complaint he along with PW6 and one Manonmani had gone there and enquired. PW1



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admits that he enquired only PW2 and no other inmates. There are 17 inmates in the Sathkaria Home. Further the evidence of PW3, PW4 and PW5 is that the victim boy committed certain mistakes, which was reprimanded by petitioner and the petitioner took steps to shift PW2 to vocational course and to another hostel. PW2 naturally had some grudge against the petitioner. Further, no independent witness, evidence and corroborative materials to test the evidence of PW2 available. In such circumstances, convicting the petitioner may not be proper. Further, on the uncorroborated evidence of PW2, convicting the petitioner may not be proper. From the evidence of PW6, the medical examination of the petitioner becomes imperative. In this case, no medical examination conducted. Hence, the conviction of the petitioner needs reconsideration. In view of the same, this Court is inclined to grant suspension of sentence to the petitioner.

7. Accordingly, the substantial sentence of imprisonment imposed on the petitioner is suspended with the following conditions:



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(a) The petitioner/ 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), with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned 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 once in three months at 10.30 a.m. on the first working day of the month, until the disposal of the appeal and if he is not able to appear before the Trial Court on that 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.



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8. Accordingly, this Criminal Miscellaneous Petition is ordered.

09.09.2024

Index : Yes/No

Internet : Yes/No

Speaking order / Non-speaking order

Neutral citation : Yes/No

rsi

Note: Issue order copy on 10.09.2024.

To

- 1.The Inspector of Police,
W-9, All Women Police Station,
Villivakkam, Chennai.
- 2.The Sessions Judge,
Special Court for Exclusive Trial of Cases
under POCSO Act, Chennai.
- 3.The Superintendent of Prison,
Central Prison for Men,
Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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