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Crl.M.P.No.11704 of 2024
in
Crl.A.No.452 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.11704 of 2024
in
Crl.A.No.452 of 2023

Vargish

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Petitioner

Vs.

State rep by The Inspector of Police,
Peelamedu Police Station,
Coimbatore District.
(Crime No.235 of 2014)

...

Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C, praying to suspend the sentence made in Spl.C.C.No.46 of 2019, on the file of the learned Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore dated 29.03.2023 and enlarge the petitioner on bail.

For Petitioner : Mr.W.Camyles Gandhi

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

ORDER



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WEB COPY This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment made in Spl.C.C.No.46 of 2019, on the file of the learned Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore dated 29.03.2023 and enlarge the petitioner on bail

2. The case of the prosecution is that while the victim girl aged about 11 years was standing near her school, the petitioner took the victim girl in his car and offered biscuits and apple; that thereafter, he took her in the car and stopped the car in a hidden place, removed her dress and touched her chest and genital area and thereafter, apprehending action against him, he locked the victim girl in the car dicky and that the victim girl was thereafter rescued by the public who had come to know of the incident.

3. The petitioner/accused in Spl.C.C.No.46 of 2019 was convicted by the Trial Court by judgment dated 29.03.2023 for offence under Sections 9(m) and 10 of POCSO Act, 2012 and Sections 363 and 365 of IPC and sentenced to undergo sever years rigorous imprisonment for offence under Section 9(m) and 10 of POCSO Act, five years rigorous imprisonment for offence under Section



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363 IPC and five years rigorous imprisonment for offence under Section 365 IPC. Aggrieved by the same, the petitioner/accused filed Crl.A.No.452 of 2023 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. The learned counsel for the petitioner would submit that there are contradictions in the evidence of the witnesses as regards the car in which the victim girl was kidnapped by the petitioner ; that the allegation with regard to inappropriate touch is false and after thought and that the petitioner who is now aged 74 years is sick and suffering from several ailments and since the appeal is not likely to be taken up in the near future, the sentence may be suspended.

5. The learned Government Advocate (crl.side) appearing for the respondent, per contra, submitted that the earlier petition for suspension of sentence filed by the petitioner was dismissed by this Court on 11.12.2023; that there is no change in the circumstances for renewing the bail application and hence the petition is liable to be dismissed.



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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 contradictions with regard to the colour of the car in which victim girl was allegedly kidnapped by the petitioner is admittedly not brought to the knowledge of this Court on the earlier occasion and hence the said petition was dismissed. Be that as it may, the petitioner is now aged 74 years and the sentence imposed is seven years. He is in custody since 29.03.2023.

8. Therefore, considering the above facts, 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.

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



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two sureties, each for a like sum to the satisfaction of the learned Special Court for Exclusive Trial of cases under POCSO Act, Coimbatore.

(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 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.

07.11.2024

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Issue order copy by 12 .11.2024
Upload the order copy forthwith.

SUNDER MOHAN, J.

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To

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



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2. The Superintendent,
Central Prison
Coimbatore.

3. The Public Prosecutor,
High Court, Madras.

4. The Inspector of Police,
Peelamedu Police Station,
Coimbatore District.

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