



Crl.M.P. No. 11413 of 2024
in
Crl.A. No. 1039 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2024

CORAM

THE HON'BLE MR.JUSTICE M. NIRMALKUMAR

Crl.M.P. No. 11413 of 2024

in

Crl.A. No. 1039 of 2024

Mr. Chaganlal

..Petitioner

Vs.

The State rep. by
Inspector of Police,
Orleanpet Police Station,
Puducherry.
(Crime No. 77/2022)

..Respondent

Prayer: Petition to suspend the sentence imposed on the petitioner in Spl.S.C. No. 133 of 2023 dated 25.07.2024 passed by Fast Track Court exclusively to deal with offences under the POCSO Act at Puducherry and release the petitioner on bail pending disposal of the above appeal.

For Petitioner :: Mr. Suresh Madhavaraj



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For Respondent :: Mr.K.S. Mohandass
Public Prosecutor
(Puducherry)
assisted by Dhanalatchumy

O R D E R

The petitioner/accused was convicted by the Trial Court in Special S.C. No. 133 of 2023 for the offence under Section 10 of POCSO Act and sentenced to undergo rigorous imprisonment for five years together with a fine of Rs.10,000/- carrying a default sentence of simple imprisonment for one month. As against the said conviction and sentence, the above appeal has been filed along with this criminal miscellaneous petition seeking suspension of sentence and bail.

2. The contention of the petitioner is that in this case, P.W.1 is mother of the victim; P.W.2 is the victim and P.W.3 is the aunt of the victim, who have spoken about the occurrence. The case projected against the petitioner is that the victim girl along with her sister had gone to the shop of the petitioner to purchase beads and other articles. At that time, the petitioner was holding a tea cup in his left hand and he placed his right hand



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on the chest of the victim girl, who pushed it away. At that time, P.W.3, the victim's aunt, who had come to that shop, had witnessed the same and lodged a complaint at the Police Station. P.W.7, the Helpline Committee Member has stated that the victim girl along with her mother, elder sister and uncle came to Child Line Office and informed about the occurrence and gave an oral complaint. The said information was sent to Orleanpet Police Station and the statement of the victim girl was thereafter recorded. In this case, the petitioner's mother admittedly was not present at the scene of occurrence. There was also a suggestion put to P.W.3, the aunt of the victim that since there were dues to be paid to the petitioner for purchase of beads and the petitioner demanded the same, he has been falsely implicated. Even the victim and her mother resiled from their earlier statements. However, the Trial Court, finding that the cross-examination was done four months after the chief examination, hence not considered the same. Moreover, it has not been suggested by the prosecution that the victim and her mother were forced to retract their earlier statements. According to the learned counsel for the petitioner, since there was a whole set of witnesses to be examined on



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identical facts, they were cross-examined later and not for any other reason.

According to the learned counsel, the version of witnesses would clearly lead to the conclusion that it was only an accidental touch and not a touch with sexual intent. Hence, the learned counsel would submit that the conviction of the petitioner needs reconsideration and prayed for suspension of sentence and bail.

3. Learned Public Prosecutor (Pondicherry) submitted that P.W.13, Sub Inspector of Police, Orleanpet Police Station, had received a complaint from P.W.1 through Child Helpline Office and on the said complaint, FIR came to be registered for the offence under Section 12 of POCSO Act and thereafter, the statements of witnesses were recorded, Observation Mahazar and Rough Sketch were prepared and on completion of investigation, charge sheet was laid. During trial, P.W.s 1 to 14 were examined; Exs.P1 to P9 were marked and M.O.1 DVD was produced. In this case, on completion of trial, the Trial Court, though found that P.W.s 1 and 2 had resiled from their earlier statements during cross-examination,



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failed to consider the same as cros-examination was done after a period of four months from the date of occurrence and convicted the petitioner based on the statement of P.W.3, the aunt of the victim girl and M.O.1, DVD recording. Further, in this case, P.W.7, the Child Helpline Co-ordinator had clearly deposed about the complaint lodged by P.W.1 and the victim girl P.W.2 narrating the incident. The factum of victim being a minor has been proved by the evidence of P.W.1, the mother and Trial Court, on the evidence adduced, had rightly convicted the petitioner. Hence, the learned Public Prosecutor submitted that the petition may be dismissed.

4. Considered the submissions on both sides and perused the materials on record.

5. It is the admitted case of the prosecution that the petitioner was holding a tea cup on his left hand and standing in the shop, It is a public place where lot of shops were there and no public witness has been



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examined. Further, the victim girl is said to have gone inside the shop of the petitioner in search of her sister, who had also come to the shop. But, her sister had not been examined. A specific suggestion has been put to the petitioner's aunt P.W.3 that there were certain dues to be paid to the petitioner with regard to purchase of beads and as he demanded the same, he has been falsely implicated. It is also seen that the victim's mother refused for medical examination of the victim. Hence, all these aspects coupled with the surrounding circumstances only lead to the inference that the petitioner's touch, which has been ascribed to be with sexual intent, needs reconsideration and this Court is inclined to suspend the sentence imposed on the petitioner and grant bail.

6. Accordingly, 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



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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 Fast Track Court Exclusively to deal with offences under the POCSO Act at Puducherry.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate 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 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.

M. NIRMALKUMAR,J.

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7. The criminal miscellaneous petition is ordered accordingly.

23.09.2024

nv

To

1. The Fast Track Court exclusively to deal with offences under POCSO Act, Puducherry.
2. Inspector of Police, Orleanpet Police Station, Puducherry.
3. The Superintendent, Kalapet, Puducherry.
4. The Public Prosecutor, High Court, Madras.

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