



WEB COPY



Crl.M.P.No.11703 of 2024
in Crl.A.No.593 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.11703 of 2024
in Crl.A.No.593 of 2024

S.Karthick

... Petitioner

Vs.

The Inspector of Police,
All Women Police Station,
Tiruvannamalai.
(Crime No.18 of 2017)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 430(1) of BNSS / 389(1) of Code of Criminal Procedure, to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Tiruvannamalai in Spl.S.C.No.47 of 2017 dated 06.04.2024 and enlarge the petitioner on bail, pending disposal of the appeal.

For Petitioner : Mr.S.Suresh

For Respondent : Dr.C.E.Pratap
Government Advocate (Crl. Side)



WEB COPY



Crl.M.P.No.11703 of 2024
in Crl.A.No.593 of 2024

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence of imprisonment imposed in the judgment, dated 06.04.2024 in Spl.S.C.No.47 of 2019 passed by the learned Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Tiruvannamalai.

2.It is the case of the prosecution that the victim is aged about 12 years; that while she was sleeping in the house along with her mother, maternal aunt, sister and brother on 07.06.2017 at about 1.00 a.m., the petitioner went to the house of the victim, gagged her mouth and carried her to a nearby place and committed penetrative sexual assault; that the siblings of the victim, namely P.W.4, P.W.10 and P.W.8/neighbour went in search of the victim and found her lying naked and returned home in the next day morning and that a complaint was lodged on 13.06.2017 for the offence under Sections 4, 6 r/w. 17 of POCSO Act.

3.The petitioner was convicted and sentenced to undergo ten years



Crl.M.P.No.11703 of 2024
in Crl.A.No.593 of 2024

years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo two months simple imprisonment for the offence under Sections 3, 4 r/w. 17 of Protection of Children from Sexual Offences Act (POCSO Act).

4.The learned counsel appearing for the petitioner would submit that the case of the prosecution that the petitioner is involved in the occurrence is contrary to the evidence on record and the earliest version given to the Doctor. He would submit that the Doctor had made entries in the Accident Register stating that the victim had told her that two known persons and two unknown persons had committed sexual assault on 07.06.2017 at about 1.00 a.m. and after making such an entry, the Doctor also noted that there was an alleged history of sexual assault by one known person, namely, the petitioner. The learned counsel further submitted that the entries made by the Doctor is contradictory; that the complaint was filed nearly six days after the alleged occurrence; that P.W.1 had admitted in the cross examination that she had told the Doctor that four persons were involved in the occurrence and that an unknown person had gagged her mouth and thereafter she fainted and she did not remember as to who committed the



Crl.M.P.No.11703 of 2024
in Crl.A.No.593 of 2024

alleged assault and therefore submitted that in view of the contradictions and the evidence, the petitioner is entitled to suspension of sentence.

5.The learned Government Advocate (Crl. Side), per contra, submitted that delay in a case like this is immaterial and in view of the consistent submission made by the victim before the learned Magistrate and in the Court, the Trial Court was right in believing the testimony of the victim and convicted the petitioner.

6.A perusal of the evidence of P.W.1 would show that she had admitted that she told the Doctor that four persons were involved in the occurrence and an unknown person had gagged her mouth, after which she fainted and she regained consciousness only the next day morning. The entries made by the Doctor also suggest that the earliest version of the victim is that four persons were involved in the offence. There is an another entry in the Accident Register just below the said entry which says that the petitioner was involved in the occurrence. This throws a doubt as regards the involvement of the petitioner. That apart, the evidence of D.W.1 and



Crl.M.P.No.11703 of 2024
in Crl.A.No.593 of 2024

D.W.2 would show that three days after the alleged occurrence there was a Panchayat held since the members of the accused family had assaulted P.W.4/brother of the victim and complaint was lodged thereafter. Considering the above and the submissions made by the learned counsel for the petitioner and the period of incarceration and the fact that the appeal is not likely to be taken in the near future, this Court is inclined to grant the relief of suspension of sentence.

7. Accordingly, this criminal miscellaneous petition stands allowed and the sentence imposed on the petitioner, is suspended till the disposal of the criminal appeal and he 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/- (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, Tiruvannamalai;

(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



Crl.M.P.No.11703 of 2024
in Crl.A.No.593 of 2024

copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity;

(iii)The petitioner shall appear before the Trial Court on the first working day of every month at 10.30 a.m until further orders 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.

02.12.2024

cse



WEB COPY



Crl.M.P.No.11703 of 2024
in Crl.A.No.593 of 2024

To

- 1.The Sessions Judge,
Special Court for exclusive trial of
cases under POCSO Act,
Tiruvannamalai.
- 2.The Inspector of Police,
All Women Police Station,
Tiruvannamalai.
- 3.The Superintendent,
Central Prison,
Vellore.
- 4.The Public Prosecutor,
Madras High Court.



WEB COPY



Crl.M.P.No.11703 of 2024
in Crl.A.No.593 of 2024

SUNDER MOHAN, J.

cse

Crl.M.P.No.11703 of 2024 in
Crl.A.No.593 of 2024

02.12.2024