



Crl.M.P.No.12507 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2024

CORAM:

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

Crl.M.P.No.12507 of 2024

in

Crl.A.No.946 of 2023

Kumar @ Sarathkumar

... Petitioner

Vs.

The State rep. by
The Inspector of Police,
W-24 All Women Police Station,
Teynampet, Chennai - 6.

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 430(1) of BNSS and 389(1) of Cr.P.C., praying to suspend the sentence imposed by the Court of Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Chennai in Special S.C.No.76 of 2020 dated 23.01.2023 and enlarge him on bail pending disposal of Crl.A.No.946 of 2023.

For Petitioner : Mr.S.Senthilvel

For Respondent : Mr.R.Vinothraja,
Government Advocate (Crl. Side)



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ORDER

WEB COPY The petitioner / accused in Spl.S.C.No. 76 of 2020 convicted by the Trial Court by judgment dated 23.01.2023 sentenced to undergo 20 years rigorous imprisonment and to pay a fine of Rs.10,000/- in default to undergo three months simple imprisonment for offence under Section 6 of POCSO Act and sentenced five years imprisonment with a fine of Rs.5,000/- in default to undergo simple imprisonment for one month for offence under Section 366 of IPC, had filed the above appeal and suspension of sentence.

2. The contention of the petitioner is that the petitioner mother and the victim's mother / P.W.1 had money transaction and they had some dispute over the same. Using her daughter, P.W.1 a complaint has been lodged against him. He further submit, the medical evidence is contra to the case of the prosecution. P.W.5, the Doctor who had examined the Accident Register copy / Ex.P4 records that while he was on duty on 24.08.2019 at 6.30p.m., the victim girl was examined and it is recorded that sexual assault was by a known male member in a house above near the child's residence at about 11.30 a.m. on 23.08.2019. P.W6, who is also a Doctor had recorded that no injuries or no pain deducted in the private part of the victim girl. P.W.6, who had further examined for the psychiatric aspect has issued Ex.P5.



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3. From Ex.P5 / report it further recorded, no bleeding and in fact on psychological examination, victim had not made any complaint. The alleged occurrence is said to have been taken place on 23.08.2019 but, the Police complaint was on a day later. The reason given for the delay by P.W.1 is that she had gain confidence after taking to her mother-in-law and thereafter, lodged complaint. It is seen that the exaggerated version statement had been given despite specific question put by the Court, the victim had stated that except for touching the private part of the victim girl, nothing more happened. The mother of the victim girl gives an exaggerated version where she states that victim girl had complained of stomach pain and she had seen white stain on genitalia and under garments and thereafter on the next day, lodged a complaint. There is no evidence or material to support the version.

4. The respondent Police had projected through P.W.3 neighbour saw the petitioner locking the door of his house was in a hurry to go out but, P.W.3 could not give the timing stated by him is contra to the case projected by the prosecution. In this case, the Trial Court had convicted the petitioner for kidnapping when there is no evidence.



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5. The learned Additional Public Prosecutor had filed his counter had submitted that P.W.1 is the mother of the victim who lodged a complaint to the respondent Police. On her complaint, a case registered. The respondent examined the victim girl thereafter, she was sent to the Hospital. P.W.5 is the Doctor who examined the victim girl, issued Accident Register / Ex.P4. P.W.6 is the other Doctor who recorded mental condition of the victim girl and also physical condition issued Ex.P5. The victim in her 164 statement and the evidence fairly stated that the petitioner committed penetrative sexual assault. The petitioner in the guise of giving the victim girl a chocolate took her to the top floor and committed penetrative sexual assault. In this case, on the evidence of P.W.1 to P.W.9 and Exs.P1 to P10, the Trial Court had rightly convicted the petitioner.

6. Considering the submission and the material on record, it is seen that the specific case of the petitioner is that there is money dispute between the petitioner's mother and the victim's mother, P.W.1 and for which, the petitioner falsely implicated. The victim girl coming to the petitioner's house, getting chocolates and thereafter, gave a portion of it to her sister and thereafter for what reason she came back to the house of the petitioner, no reason given. The Doctors who examined the victim, P.W.5 & P.W.6 gave



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report Ex.P4 & P5. Supports the case of petitioner, falsifies the prosecution case evidence of P.W.1 is found exaggerated. From the medical evidence and the evidence of victim, it is seen that the conviction needs reconsideration.

7. In view of the same, this Court finds that the conviction of the petitioner needs reconsideration. Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal revision:

(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) 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 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 once in three months at 10.30 a.m., until the disposal of the appeal and if he is not able to



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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.

8. Accordingly, this Criminal Miscellaneous Petition is ordered.

17.10.2024

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Index : Yes/No

Internet : Yes/No

Speaking order/Non speaking order

Neutral citation : Yes/No

To



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WEB COPY

1.The Sessions Judge,
Special Court for Exclusive Trial
of cases under POCSO Act, Chennai.

2.The Superintendent,
Central Prison,
Puzhal - I, Chennai.

3.The Inspector of Police,
W-24 All Women Police Station,
Teynampet, Chennai - 6.

4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

KKN

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