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Crl.M.P.No.12678 of 2024 in Crl.A.No.185 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.12678 of 2024
in Crl.A.No.185 of 2024

Mani

... Petitioner

Vs.

The State Rep. by
The Inspector of Police,
Magudanchavadi Police Station,
Salem District.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 430[1] of BNSS & 389 (1) of Cr.P.C., to suspend the sentence made in Spl.S.C.No.118 of 2021, dated 29.09.2023, by the learned Sessions Judge, Principal POCSO Court, Salem and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

For Petitioner : Mr.N.Stalin
For Respondent : Mr.Dr.C.E.Pratap
Government Advocate (Crl.Side)

ORDER

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner in Spl.S.C.No.118 of 2021, dated 29.09.2023, by the learned Sessions Judge, Principal POCSO Court, Salem and enlarge the petitioner on bail pending disposal of the Criminal Appeal.



2.It is the case of the prosecution that petitioner was a neighbour of the victim, that on 28.10.2020, when the victim was alone, the petitioner entered into the house of the victim and intimidated the victim and forcibly had sexual intercourse with the victim and thereby committed offences under Sections 450 & 506 (ii) IPC and Section 3 r/w 4 of POCSO Act, 2012.

3. The petitioner, who is arrayed as Accused No.1 in the above Sessions Case, was convicted and sentenced to undergo rigorous imprisonment for five years along with a fine of Rs.1000/- for each of the offences under Section 450 IPC and Section 7 r/w 8 of POCSO Act. In default of payment of fine, the accused has to undergo additional rigorous imprisonment for one year for each of the offences under Section 450 IPC and Section 7 r/w 8 of POCSO Act. The sentences are ordered to be run consecutively.

4. The learned counsel appearing for the petitioner submitted that the evidence of the victim is contrary to the statement made under Section 164 Cr.P.C., that the medical evidence would belie the prosecution case with regard to the commission of penetrative sexual assault and the Trial Court therefore ought not to have convicted the petitioner for the offences under Section 7 r/w 8 of POCSO Act and that the petitioner is in custody



from 29.09.2023 and prayed for grant of suspension of sentence to the petitioner.

5. The learned Government Advocate (Crl. Side) *per contra* filed a counter opposing the grant of suspension of sentence and submitted that the evidence of the victim and the other evidence would conclusively establish the guilt of the petitioner.

6. Though the case of the prosecution is that the petitioner had committed penetrative sexual assault, the said allegation was disbelieved by the Trial Court and the Trial Court had convicted the petitioner for the offences under Section 7 r/w 8 of the POCSO Act. The medical evidence would show that the victim was not subjected to sexual intercourse. The learned counsel for the petitioner has raised substantial grounds in the appeal which requires consideration.

7. Therefore, considering the above facts, the period of incarceration from 29.09.2023 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/A1.



8. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioner/A1 is suspended and the petitioner/A1 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 two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Principal POCSO Court, Salem;
- (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.

08.11.2024

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Issue order copy by 11.11.2024
Upload the order copy forthwith.



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To
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- 1.The Sessions Judge,
Principal POCSO Court, Salem.
- 2.The Inspector of Police,
Magudanchavadi Police Station,
Salem District.
3. The Superintendent of Prisons,
Central Prison, Salem.
- 4.The Public Prosecutor,
Madras High Court.



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SUNDER MOHAN, J.

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