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Crl.M.P.No.12186 of 2024 in Crl.A.No.1555 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.12186 of 2024
in Crl.A.No.1555 of 2023

Subramani

... Petitioner

Vs.

State by:

The Inspector of Police,
All Women Police Station,
Perur, Coimbatore District.
(Crime No.5/2006).

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 430(1) of BNSS and 389(1) of Code of Criminal Procedure, to suspend the sentence imposed by the trial Court in the judgment dated 30.10.2023 made in S.C.No.27/2019 on the file of the learned Sessions Judge, Mahila Court/Additional Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore and enlarge the petitioner on bail, pending disposal of the above Criminal Appeal.

For Petitioner	:	Mr.P.M.Duraiswamy
For Respondent	:	Dr.C.E.Pratap, Government Advocate (Crl. Side)



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ORDER

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This Criminal Miscellaneous Petition has been filed to suspend the sentence of imprisonment imposed in S.C.No.27 of 2019, dated 30.10.2023 by the learned Sessions Judge, Mahila Court/Additional Special Court for Exclusive Trial of Cases under Protection of Children from Sexual Offences Act, Coimbatore and to enlarge the petitioner on bail pending disposal of the appeal.

2.The case of the prosecution is that the victim girl had a love affair with one Chinnathangan @ Madeshwaran; that on 28.04.2006 when the victim girl was waiting at a bus stop, the petitioner and A2 (since deceased) told the victim that they were friends of the said Chinnathangan and promised to take her to his house and took her in a Tata Sumo car bearing Reg.No.TN-38-B-7475 to two places and in both the places, her lover was not found; that thereafter the petitioner and other accused forced the victim girl to consume alcohol, as a result of which, she became unconscious and thereafter committed rape. It is further the case of the prosecution that after committing rape, the petitioner and other accused threatened the victim girl



and took her to the house of one Udhaya; and that thereafter the victim girl went from Udhaya's house and lodged the complaint on 02.05.2006.

3.The petitioner was convicted for offences under Sections 366 & 376(2)(g) of IPC and in so far as the offence under Section 366 of IPC, the petitioner was sentenced to undergo five years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default of payment of fine to undergo Simple Imprisonment for six months and in so far as the offence under Section 376(2)(g) of IPC, the petitioner was sentenced to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default of payment of fine to undergo Simple Imprisonment for six months *vide* judgment, dated 30.10.2023 made in S.C.No.27 of 2019.

4.Heard Mr.P.M.Duraiswamy, learned counsel for the petitioner and Dr.C.E.Pratap, learned Government Advocate (Crl. Side) appearing for the respondent/State.



5.The learned counsel for the petitioner would submit that this is the second application for suspension of sentence and certain vital points were not placed before this Court when the earlier bail application was considered on 11.06.2024; that the prosecution suffers from several infirmities; namely that the lover of the victim girl was not examined; the said Udaya in whose house the victim girl is said to have stayed from 28.04.2006 to 30.04.2006 was not examined; that the victim girl had lodged a complaint belatedly on 02.05.2006 and the said complaint was misplaced; and that the FIR marked before the Trial Court was a reconstructed FIR (Ex.P6) which is contrary to the earlier version. The learned counsel would further submit that the petitioner is in custody from 30.10.2023 and prayed for suspension of sentence.

6.The learned Government Advocate (Crl. Side) *per contra* would submit that the victim girl had clearly deposed against the petitioner; that the infirmities pointed by the prosecution would not affect the victim girl's version in any manner; and that the petitioner had not made out any ground for suspension of sentence. A counter has also filed by the respondent Police



to that effect.

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7.On perusal of the records, it is seen that the prosecution had not examined the said Udaya in whose house the victim girl is said to have stayed between 28.04.2006 and 30.04.2006; that the victim's lover Chinnathangan was not examined; that the complaint was lodged belatedly on 02.05.2006; that the prosecution had not examined the Doctor who had examined the victim girl; and that the prosecution had also not produced the original FIR which raises a doubt. Hence, a *prima facie* case has been made out for suspension of sentence.

8.Considering the above; the fact that there are several arguable points in the appeal; that the petitioner is in custody from 30.10.2023; and 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.

9.Accordingly, this criminal miscellaneous petition stands allowed and the sentence imposed on the petitioner is suspended and the petitioner is



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ordered to be released on bail on the following conditions:

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(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 Judicial Magistrate, Additional Mahila Court, 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 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.

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- To
- 1.The Sessions Judge,
Mahila Court/Additional Special Court for Exclusive Trial of Cases
under Protection of Children from Sexual Offences Act,
Coimbatore.
 - 2.The Judicial Magistrate,
Additional Mahila Court,
Coimbatore.
 - 3.The Inspector of Police,
All Women Police Station,
Perur, Coimbatore District.
 - 4.The Central Prison,
Coimbatore.
 - 5.The Public Prosecutor,
Madras High Court.



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SUNDER MOHAN, J.

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