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*Crl.M.P.No.12189 of 2024
in Crl.A.No.708 of 2024*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.12189 of 2024

in

Crl.A.No.708 of 2024

Selvam

... Petitioner /Accused

Vs.

The State Represented by
The Inspector of Police,
All Women Police Station.
Perambalur.
(Crime No.12 of 2020)

... Respondent / Complainant

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C. praying to suspend the sentence passed in judgment in Spl.S.C.No.34 of 2020 dated 29.11.2023 on the file of the learned Full Additional Incharge, Mahila Court, Perambalur convicting and sentencing the appellant/accused herein to undergo 20 years rigorous imprisonment for the offences under Section 5(l), 6 of POCSO Act and fine of Rs.50,000/-, in default of payment of fine, rigorous imprisonment for two years and to undergo 2 years imprisonment for the offence under Section 506(i) of I.P.C. and enlarge the petitioner herein on bail pending disposal of the Criminal Appeal.



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

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in Spl.S.C.No.34 of 2020 dated 29.11.2023 on the file of learned Full Additional Incharge, Mahila Court, Perambalur and release the petitioner on bail pending disposal of the above Criminal Appeal.

2. The case of the prosecution is that the petitioner and the victim were neighbours; that on 10.05.2020 at about 11.00 a.m., when the mother of the victim was not in the house, the petitioner went to the house of victim and after she opened the door, he locked the door from inside and thereafter had forcible sexual intercourse with the victim; that thereafter, by threatening the victim that he had photographs of the victim being in a compromising position in his mobile, had intercourse twice; that the victim complained about the same to her mother on 10.06.2020 and PW1/mother had lodged a complaint on 11.06.2020.



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3. The petitioner/accused in Spl.S.C.No.34 of 2020 was convicted by the Trial Court by judgment dated 29.11.2023 for the offences under Sections 5(l) and 6 of POCSO Act, 2012 and Section 506(i) of I.P.C. and sentenced to undergo 20 years rigorous imprisonment and to pay a fine of Rs.50,000/-, in default, to undergo rigorous imprisonment for two years for offence under Sections 5(l) and 6 of POCSO Act and for the offence under Section 506(i) of I.P.C., sentenced to undergo 2 years imprisonment. Aggrieved by the same, he filed Crl.A.No.708 of 2024 before this Court along with the instant miscellaneous petition seeking suspension of sentence and bail.

4.The learned counsel for the petitioner would submit that the petitioner was in custody during investigation from 12.06.2020 to 13.09.2021 and is in custody from 29.11.2023; that the prosecution had not established that the victim was a minor in the manner known to law; that the Principal of Government ITI /PW6, who had issued a Education Certificate mentioning the Date of Birth is 18.03.2003, had deposed that the Date of Birth was mentioned based on the Admission Register; that the Admission Register was not marked; and that the birth certificate of the victim was not marked by the prosecution. The learned counsel further submitted that the victim had stated in her



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statement under Section 164 Cr.P.C. that when the petitioner's wife came and enquired about the petitioner, the petitioner hid himself in the bath room and she did not disclose the said fact to his wife, which would show that there was a consent.

5. Heard the learned counsel for the petitioner as well as the learned Government Advocate (Crl. Side) appearing for the respondent and perused the counter affidavit filed by the respondent.

6. The petitioner has been in incarceration during investigation and after the date of conviction, for about 2 ½ years. There is force in the submission made by the learned counsel for petitioner that the prosecution had not established the date of birth of the victim in the manner known to law. The question as to whether the victim was a minor at the relevant point of time and as to whether the occurrence took place in the manner alleged by the prosecution, has to be examined in the appeal. The appeal is not likely to be taken up in the near future. Hence, considering the above facts and since there are substantial grounds raised in the above appeal, this court is inclined to grant the relief of suspension of sentence to the petitioner.



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7. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioner is suspended till the disposal of the above Criminal appeal and the petitioner 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 Full Additional Incharge, Mahila Court, Perambalur;
- (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.

16.12.2024

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Issue order copy by 19.12.2024
Upload the order copy forthwith.



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SUNDER MOHAN, J.

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To

- 1.The Full Additional Incharge,
Mahila Court, Perambalur
- 2.The Superintendent,
Central Prison,
Trichy.
- 3.The Inspector of Police,
All Women Police Station.
Perambalur.
- 4.The Public Prosecutor,
High Court, Madras.

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