



CRL MP. 12826 of 2024 in
CRL A NO.1145 OF 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **13-12-2024**

CORAM

THE HONOURABLE MR JUSTICE SUNDER MOHAN

CRL MP. 12826 of 2024 IN CRL.A.NO.1145 OF 2024

FLAG @ AAKASH
S/O. SRINIVASAN,
NO.32/2, 6TH STREET, K.C.GARDEN,
THIRU.VI.KA. NAGAR,
CHENNAI - 600 082.

...

APPELLANT

Vs

THE STATE REP BY
THE INSPECTOR OF POLICE,
W-17, ALL WOMEN POLICE STATION,
PERAVALLUR, CHENNAI.

...

RESPONDENT

For Appellant : MR.R.VIJAYARAGHAVAN

For Respondent : DR.C.E.PRATAP,
GOVT. ADVOCATE (CRL.SIDE)

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in Special Sessions Case No.13 of 2021 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases Under POCSO Act, Chennai-600 104, pending disposal of the appeal.



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2. The case of the prosecution is that, the petitioner was aged 19 years and the victim was aged 4 years at the time of time of occurrence; that they were neighbours; that on 27.01.2020, when the victim child was alone in the house, the petitioner bought chocolates for the victim child and took her to his house and thereafter removed her cloths and penetrated his fingers in the private part of the victim; that the victim complained of pain and thereafter the mother of the victim viz. PW1 gave a complaint on 29.01.2020.

3. The petitioner/Accused in Spl.S.C.No.13 of 2021 was convicted by the Trial Court and sentenced to undergo Rigorous Imprisonment for 10 years alongwith fine of Rs.5,000/- for the offence under Section 366 of IPC and in default, to undergo simple imprisonment for one month and sentenced to undergo Rigorous Imprisonment for 20 years alongwith fine of Rs.5,000/- for the offence under Section 6 of POCSO Act, in default, to undergo simple imprisonment for one month. Aggrieved by the same, the petitioner/accused filed Crl.A.No.1145 of 2024 along with the instant miscellaneous petition seeking suspension of sentence and bail.



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4. The learned counsel for the petitioner would submit that the petitioner was is in custody during investigation for a period of six months and is now in custody from 21.04.2022; that the evidence of the victim would show that the offence of penetrative sexual assault is not made out; that the evidence of the doctor would confirm that there are no injuries on the private part of the victim; that the victim did not complain of any pain; that the complaint was lodged belatedly as an after thought and that there are several arguable points in the appeal which requires consideration and hence prayed for suspension of sentence.

5. The learned Govt. Advocate (crl.side), on instructions, would submit that the victim had deposed about the sexual assault committed by the petitioner; that considering the nature of offence, one cannot expect any corroboration; that considering the evidence of the victim, the trial court had rightly convicted the petitioner and prayed for dismissal of the petition.

6. Heard the learned counsel for the petitioner as well as the learned Government Advocate (crl.side) and perused the counter filed by the respondent.



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7. The evidence of the victim would show that the appellant had touched the private part of the victim. The evidence of doctor is that there was no injury on the private part of the victim and the victim did not complain of any pain. The conviction is based on the sole testimony of the victim and it has to be examined in the appeal as to whether there can be a conviction based on the sole testimony of the victim, even for the offence of sexual assault. The petitioner is in custody from 21.04.2022 and was in custody during investigation for a period of six months.

8. Considering the fact that the petitioner is in custody from 21.04.2022 and 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.

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



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learned Sessions Judge, Special Court for Exclusive Trial of
Cases Under POCSO Act, Chennai ;

(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.

13.12.2024

rgf

Issue order copy by 16.12.2024

Upload the order copy forthwith.



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SUNDER MOHAN, J.
rgr

To

1. The Sessions Judge,
Special Court for Exclusive Trial
of Cases Under POCSO Act,
Chennai.
2. The Inspector of Police,
W-17, All Women Police Station,
Peravallur, Chennai.
3. The Superintendent
Central Prison - I, Puzhal,
Chennai.
4. The Public Prosecutor,
High Court, Madras.

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