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Crl.M.P. No. 13161 of 2024
in
Crl.A. No. 1183 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2024

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THE HON'BLE MR. JUSTICE M. NIRMALKUMAR

Crl.M.P. No. 13161 of 2024

in

Crl.A. No. 1183 of 2024

Magesh

..Petitioner

Vs.

State rep. by
Inspector of Police,
W-21, AWPS, Guindy,
Chennai 32.

..Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure to suspend the sentence imposed on the petitioner/appellant by the Special Court for Exclusive Trial of Cases under POCSO Act by judgment dated 05.07.2022 in Spl.S.C. No. 177 of 2018 and



Crl.M.P. No. 13161 of 2024
in
Crl.A. No. 1183 of 2024

enlarge the petitioner on bail pending disposal of the criminal appeal.

For Petitioner :: Mr.P. Syed Abdul Mashood

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

O R D E R

The petitioner/accused in Special S.C. No. 177 of 2018 was convicted and sentenced by the Trial Court by judgment dated 05.07.2022 for the following offences:

<i>Section of Offence</i>	<i>Sentence imposed</i>
Section 10 of POCSO Act	5 years rigorous imprisonment with a fine of Rs.5000/- in default to undergo simple imprisonment for one month.
Section 506(ii) IPC	2 years simple imprisonment

2. The contention of the learned counsel for the petitioner is that the petitioner has been falsely implicated in this case. The petitioner and the victim girl are adjacent residents. The petitioner's daughter and the victim girl are classmates. The case projected against the petitioner is that one day,



Crl.M.P. No. 13161 of 2024
in
Crl.A. No. 1183 of 2024

WEB COPY

when the victim girl came to drop the water can in the supplier's house, the petitioner had called her inside, kissed her on one of her cheeks and stated that she is very beautiful. Thereafter, he had pulled her skirt down, but the victim girl ran away from the scene of occurrence. The petitioner is said to have threatened the victim girl not to divulge anything to her parents lest she would be killed. According to the learned counsel, this solitary incident has been projected as though the petitioner, with sexual intent, had committed sexual assault by kissing the victim girl. The petitioner was arrested in this case on 01.04.2017 and thereafter, he came out on bail after two months on 16.06.2017. After the judgment of conviction rendered by the Trial Court, the petitioner was arrested on 18.04.2022 and from that day onwards, he is in prison for nearly two years and 8 months, which is more than half of the period of sentence. Hence, the learned counsel for the petitioner would pray for suspension of sentence and bail.

3. Learned Government Advocate (Crl.Side) has filed counter and submitted that the victim girl P.W.1 was around 9 years on the date of occurrence. On 31.03.2017, a complaint was lodged by P.W.2, the mother



Crl.M.P. No. 13161 of 2024
in
Crl.A. No. 1183 of 2024

WEB COPY

of the victim girl, who had stated that on 30.03.2017, at about 5.30p.m., the victim girl went to the house of the water can supplier to return the empty water can. At that time, the petitioner, who was residing next door, had pulled the victim girl into his house, kissed her stating that she looks beautiful and attempted to pull her skirt. However, the victim girl escaped and came out running. The petitioner/accused had thereafter threatened her not to divulge anything about the incident to anyone. Thereafter, when the victim girl was sitting in her mother's tailoring shop, the petitioner had again threatened her. On seeing this, P.W.2 questioned the victim girl and on coming to know about the incident, the complaint came to be lodged. In this case, the victim girl had clearly narrated the incident to the learned Magistrate, who recorded her statement under Section 164 Cr.P.C. which came to be marked as Ex.P2. During trial, P.W.s 1 to 8 were examined and Exs.P1 to P7 were marked. Neither any oral nor documentary evidence was produced on the side of the defence. One Kaja Mohideen, Principal of the school where the victim girl studied upto V standard was examined as C.W.1 and the bona fide certificate produced regarding the age of the victim



Crl.M.P. No. 13161 of 2024
in
Crl.A. No. 1183 of 2024

WEB COURT

girl was marked through him as Ex.C1. On completion of trial, the Trial Court convicted the petitioner for the offences aforesaid and rightly so. Hence, the learned Government Advocate (Crl. Side) prayed for dismissal of the petition.

4. Considered the submissions on either side and perused the materials on record.

5. In this case, it is seen that on 30.03.2017, the petitioner is said to have kissed the victim girl on her cheek by pulling her inside his house and thereafter, threatened her. According to the learned counsel for the petitioner, there is some dispute between the petitioner's family and the victim's family and the petitioner has been falsely implicated. Further, except for the solitary incident of the petitioner kissing the victim girl on her cheek, there is no other allegation against the petitioner. Therefore, kissing the victim girl on her cheek may not have been with sexual intent. Moreover, the petitioner is under incarceration for more than 2 years. In such circumstance, this Court is of the view that the petitioner's conviction needs to be reconsidered and this Court is inclined to suspend the sentence and



Crl.M.P. No. 13161 of 2024
in
Crl.A. No. 1183 of 2024

enlarge him on bail.

6, Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal Appeal:

(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 Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai – 104.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Trial Judge 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 month at 10.30 a.m., until the disposal of the appeal and if he is not able to appear



WEB COPY



Crl.M.P. No. 13161 of 2024
in
Crl.A. No. 1183 of 2024

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.

7. Accordingly, this Criminal Miscellaneous Petition is ordered.

19.10.2024

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Crl.M.P. No. 13161 of 2024
in
Crl.A. No. 1183 of 2024

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- To
1. The Special Court for Exclusive Trial of cases under POCS Act, Chennai – 104.
 2. Inspector of Police,
W-21, AWPS, Guindy,
Chennai 32.
 3. The Public Prosecutor,
High Court, Madras.

M. NIRMALKUMAR,J.

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WEB COPY



Crl.M.P. No. 13161 of 2024
in
Crl.A. No. 1183 of 2024

Crl.M.P. No. 13161 of 2024
in
Crl.A. No. 1183 of 2024

19.10.2024