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Crl.M.P.No.12207 of 2024
in Crl.A.No.1101 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.12207 of 2024
in Crl.A.No.1101 of 2024

Arivalagan

... Petitioner

Vs.

The State rep. by
The Inspector of Police,
All Women Police Station,
Attur, Salem District.
(Crime No.5 of 2019)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of Code of Criminal Procedure, to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Principal POCSO Court, Salem, by judgment dated 13.03.2023 in Spl.S.C.No.87 of 2020 dated 13.03.2023 and enlarge the petitioner on bail, pending disposal of the appeal.

For Petitioner : Mr.T.Arul

For Respondent : Dr.C.E.Pratap
Government Advocate (Crl. Side)



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ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence of imprisonment imposed in the judgment, dated 13.03.2023 in Spl.S.C.No.87 of 2020 passed by the learned Sessions Judge, Principal POCSO Court, Salem.

2.It is the case of the prosecution is that the petitioner and the victim girl were living in the same Village; that on 04.07.2019 at about 9.30 p.m. when the defacto complainant/mother of the victim girl along with the victim were talking to the victim's father over phone in front of their house, the petitioner caught hold of the victim's hand and forcibly dragged her from the said place and kidnapped the victim girl from the lawful guardianship of her parents, took her to a lonely place and had forcible sexual intercourse with the minor victim.

3.The petitioner was convicted for offence under Section 366 IPC and sentenced to undergo seven years rigorous Imprisonment and to pay a fine of



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Rs.1,000/- in default to undergo one year rigorous Imprisonment and for the offence under Section 3(a) r/w. 4 of Protection of Children Sexual Offences Act, 2012 (POCSO Act) and sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo two years rigorous imprisonment.

4.The learned counsel appearing for the petitioner would submit that the petitioner and the victim girl had love affair; that since the mother of the victim girl was opposed to the said love affair, a false complaint was lodged; that the earliest version of the victim before the Doctor (P.W.6) is that the victim had gone voluntarily with the petitioner and she knew him for about one year and had sexual relationship for about three months prior to the examination and that this version is contrary to the prosecution's case and therefore, in view of the contradictions, the evidence of the victim does not inspire confidence; that the petitioner is in custody from 13.03.2023 and he was also in custody during investigation for about two months. Hence, prayed for suspension of sentence.



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5.The learned Government Advocate (Crl. Side), per contra, would submit that the victim had deposed in a clear and cogent manner and therefore, the Trial Court was right in convicting the petitioner for the offences and the petitioner had not made out any case for suspension of sentence.

6.On perusal of the evidence of the victim (P.W.2) and the evidence of the Doctor (P.W.6), it is seen that the victim has made contradictory statements and her earliest version before the Doctor is contrary to her deposition before the Court and the prosecution case. Therefore this Court has to examine whether the petitioner can be convicted on such evidence. Considering the above and the fact that the petitioner is in custody from 13.03.2023 and was also in custody for about two months during investigation, this Court is inclined to grant the relief of suspension of sentence.

7.Accordingly, this criminal miscellaneous petition stands allowed and the sentence imposed on the petitioner, is suspended till the disposal of the



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criminal appeal and he 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/- (Rupees ten thousand only), 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;

(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.

21.11.2024

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SUNDER MOHAN, J.

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To

- 1.The Sessions Judge,
Principal POCSO Court,
Salem
- 2.The Inspector of Police,
All Women Police Station,
Attur, Salem District.
- 3.The Central Prison,
Salem.
- 4.The Public Prosecutor,
Madras High Court.

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