



Crl.M.P.No.13312 of 2024 in Crl.A.No.1200 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.13312 of 2024
in Crl.A.No.1200 of 2024

Devaraj

... Petitioner /Sole Accused

Vs.

The State Rep. by
The Inspector of Police,
W-22, All Women Police Station,
Mylapore, Chennai 600 028
(Crime No.2 of 2019)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (3) Cr.P.C., to suspend the execution of sentence imposed on the petitioner /Appellant by an order of the learned Special Court for Exclusive Trial of cases under POCSO Act in Spl.S.C.No.16 of 2020 dated 25.03.2024 pending disposal of the above Criminal Appeal.

For Petitioner : Mr.P.Asai Thambi
For Respondent : Dr.C.E.Pratap
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner/accused by judgment and order dated 25.03.2024 passed in S.C.No.16 of 2020 on the file of the learned Special Court for Exclusive Trial of Cases under POCSO Act,



Chennai, and to enlarge the petitioner on bail pending disposal of the appeal.

2. It is the case of the prosecution that the petitioner/ accused, who is the neighbour of the victim child, aged about nine years, called the child to his house; that when the victim child went to his house, the accused gave pen to her and made her to sit on his lap, kissed and thereafter, committed penetrative sexual assault; that the accused thereafter threatened the victim girl stating that he would kill her father if she disclosed what happened to anyone else.

3. The petitioner, was convicted for the offence under Section 6 of the POCSO Act and sentenced to undergo Rigorous Imprisonment for 10 years and also pay a fine of Rs.5,000/- in default to undergo simple imprisonment for one month and Section 506(i) of IPC and sentenced to undergo imprisonment for one year. Both the sentences were ordered to run concurrently.

4. Heard Mr.P.Asai Thambi, learned counsel for the petitioner and Dr.C.E.Pratap, learned Government Advocate (Crl.Side) appearing for



the respondent/State.

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5. The learned counsel appearing for the petitioner would submit that the complaint was lodged one month after the alleged incident had taken place; that there are contradiction in the deposition of the victim girl and 164 statement, that the earlier statement given by the Doctor would suggest that the allegation of penetrative sexual assault is an after thought; that even if the evidence of the victim girl is accepted, the offence of penetrative sexual assault is not made out that the petitioner is now aged 70 years, and hence, prayed for grant of suspension of sentence to the petitioner.

6. The learned Government Advocate (Crl. Side) *per contra* submitted that the prosecution has proved its case beyond any reasonable doubt and that the Trial Court was right in convicting the petitioner and that the petitioner has not made out any ground for suspension of sentence and hence, prayed for dismissal of this petition.

7. The complaint was lodged one month after the alleged incident had taken place. The evidence of PW6, the Doctor who examined the victim girl shows that the victim girl refused to disclose any incident to



the doctor and the victim girl had only stated that the petitioner had harassed her. PW6 had further stated that no injuries were found on the victim girl to suggest that she was subjected to Penetrative sexual assault. The evidence of the Doctor coupled with the contradiction in the evidence of the victim girl and her 164 Cr.PC statement requires further deliberation at the time of final hearing of the appeal. The petitioner is in custody from 25.03.2024.

8. Therefore, considering the above facts, the submissions made by the learned counsel for the petitioner, the period of incarceration and the fact 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 learned Special Court for Exclusive Trial of Cases



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under POCSO Act, Chennai 600 104.

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- (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.

07.11.2024

rka

Issue order copy by 12.11.2024
Upload the order copy forthwith.

SUNDER MOHAN, J.

rka

To



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1.Special Court for Exclusive Trial of Cases under POCSO Act,
Chennai 600 104.

2. The State Rep. by
The Inspector of Police,
W-22, All Women Police Station,
Mylapore, Chennai 600 028
(Crime No.2 of 2019)

3. The Superintendent of Prisons,
Central Prison, Puzhal

4.The Public Prosecutor,
Madras High Court.

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