



Crl.M.P.No.13838 of 2024 in Crl.A.No.1238 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.12.2024

PRONOUNCED ON : 21.12.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.13838 of 2024

in

Crl.A.No.1238 of 2024

P.Venkatachalam @ Periyasamy ... Petitioner/Sole Accused

Vs.

The State Rep. by
The Inspector of Police,
All Women Police Station,
Kangeyam, Tiruppur District.
(Cr.No.8/2018)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 430 of BNSS, to suspend the sentence imposed in Spl.S.C.No.87 of 2023 dated 12.06.2024 on the file of the learned Sessions Judge, Magalir Neethi Mandram (FTMC), Tiruppur and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.S.Shanmugasundaram
for Mr.R.Muruga Bharathi

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

ORDER

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This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner/accused by judgment and order dated 12.06.2024 passed in Spl.S.C.No.87 of 2023 on the file of the learned Sessions Judge, Magalir Neethi Mandram (FTMC), Tiruppur, and to enlarge the petitioner on bail pending disposal of the appeal.

2. The case of the prosecution is that the victim child suffers from an intellectual disability; that the petitioner is the stepfather, who is living with her mother in Kerala; that the victim is residing with her maternal grandmother/defacto complainant [PW2]; that the petitioner and his wife (mother of the victim) used to visit the victim child once in two months and during such a visit, the petitioner is said to have taken the victim to a forest area and committed penetrative sexual assault and also threatened her with dire consequences.

3. The petitioner was convicted and sentenced by the trial Court as follows:

Offence under Section	Sentence imposed
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5 (k)(l)(n) r/w 6 of POCSO Act	To undergo RI for twenty years and to pay a fine of Rs.2,000/-, in default to undergo SI for three months
376AB of IPC	Since, the accused is sentenced for offence under Sections 5 and 6 of POCSO Act, no separate sentence is imposed.

4. Heard Mr.S.Shanmugasundaram, learned counsel for the petitioner and Dr.C.E.Pratap, learned Government Advocate (Crl.Side) appearing for the respondent/State.

5. (i) The learned counsel appearing for the petitioner would submit that the petitioner has been victimised due to a dispute between the grandmother of the victim [PW2] and his wife, as regards the property of his wife; that the case has been foisted only to wreak vengeance; that the evidence of the Doctor, who examined the victim would show that the victim had only stated about the alleged misbehaviour by the petitioner; and that the victim's hymen was intact and there were no external injuries in her breasts and genital part.

(ii) The learned counsel for the petitioner would further submit that the grandmother of the victim [PW2] had admitted in her cross



examination that the victim was not capable of stating any fact cogently; that the victim had admitted that since there was a dispute between the grandmother and her mother, the petitioner and her mother never visited their house and therefore, the evidence of the victim ought not to have been believed by the trial Court; that the petitioner is in custody from 12.06.2024; and that therefore, the sentence imposed on the petitioner may be suspended.

6. The learned Government Advocate (Crl. Side) *per contra* submitted that the victim's evidence is cogent and convincing though she suffered from intellectual disability and merely because there is a dispute between the grandmother and the petitioner's wife, it cannot be stated that the case is false and prayed for dismissal of the petition.

7. On perusal of the record, this Court finds that the doctor [PW5] had recorded in her certificate that the victim had stated about the misbehaviour by the petitioner. The doctor also found that there are no external injuries and the hymen was intact. The alleged occurrence is said to have taken place on 15.03.2023 and the complaint was lodged on 01.05.2023. The victim though had supported the prosecution case with



regard to the allegation of penetrative sexual assault, PW2 had admitted that the victim suffers from intellectual disability and at times she would speak normally and sometimes speak abnormally and that she would repeat whatever is told to her. There is also evidence to suggest that PW2 and the wife of the petitioner/accused had dispute with regard to the property which stood in the name of the petitioner's wife and the defacto complainant [PW2] had claimed a right over the said property. That apart, the mother of the victim was not examined by the prosecution.

8. Considering the above, the fact that the petitioner has raised substantial grounds, which require consideration and considering the period of incarceration and also 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**. 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 Sessions Judge, Magalir Neethi Mandram



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(FTMC), Tiruppur;

(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.

21.12.2024

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Issue order copy 21.12.2024

Upload the order copy forthwith.



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SUNDER MOHAN, J.

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- To
1. The Sessions Judge,
Magalir Neethi Mandram (FTMC), Tiruppur.
 2. The Inspector of Police,
All Women Police Station,
Kangeyam, Tiruppur District.
 3. The Superintendent of Prisons,
Central Prison, Coimbatore.
 4. The Public Prosecutor,
Madras High Court.

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