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CRL MP. 13688 of 2024 in
CRL A NO.395 OF 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-12-2024

CORAM

THE HONOURABLE MR JUSTICE SUNDER MOHAN

CRL MP NO. 13688 of 2024

IN CRL.A.NO.395 OF 2024

BALAJI

S/o.Pichandi, No.7, Kulakkarai Street,
Araiypakkam Village, Kilavalam Post,
Mauranthagam Taluk, kancheepuram District.

Appellant(s)

Vs

State Represented By
Inspector of Police, All Women Melmaruvathur
Police Station, Chengalpattu District.

(crime No.4/2016)

Respondent(s)

For Appellant(s) : Mr.M.N.Balakrishnan for
Mr.R.Parthiban

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

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the conviction and sentences imposed on the petitioner in Spl.S.C.No.26 of 2019 dated 28.02.2023 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Chengalpattu and to release the petitioner on bail, pending disposal of the above appeal.



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2. The case of the prosecution is that the petitioner and the victim were neighbours and that on 02.07.2016, at about 15.30 hrs., when the victim was alone at home, the petitioner trespassed into the house and locked the house from inside and committed penetrative sexual assault by inserting his finger in the private part of the victim.

3. The petitioner/Accused in Spl.S.C.No.26 of 2019 was convicted by the Trial Court and sentenced to undergo five years Rigorous Imprisonment with fine of Rs.5000/- for the offence u/s 450 IPC and in default to undergo six months simple imprisonment; for the offence u/s 363 IPC, sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for one year; for offence u/s 5(m), r/w 6 of POCSO Act, sentenced to undergo 10 years rigorous imprisonment and to pay fine of Rs.10000/-, in default to undergo two years simple imprisonment. Aggrieved by the same, the petitioner/accused filed Crl.A.No.395 of 2024 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. The learned counsel for the petitioner would submit that the initial version is that penetrative sexual assault by the petitioner by inserting his



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finger; that however, the victim in her deposition had stated that the petitioner had inserted his penis in her private part and that this is a tutored and improved version which is admitted by the investigating officer; that the doctor had deposed that there were no injuries on the victim; that the petitioner is in custody from 28.02.2023 and prayed for suspension of sentence.

5. Heard the learned Govt. Advocate (crl.side) and perused the counter affidavit.

6. The learned Government Advocate(crl.side) per contra, would submit that the judgment of conviction is based on the evidence of victim and no interference is called for and prayed for dismissal of the petition.

7. On perusal of the evidence of the victim, it is seen that the deposition of the victim before the court as regards the manner in which the penetrative assault was committed is contrary to the prosecution case. That apart the medical evidence, *prima facie* belies the evidence of the victim. This court has to examine as to whether the conviction can be based on the sole testimony of the victim in the above appeal and the appeal is not likely



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to be taken up in the near future.

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8. Considering the fact that the petitioner has raised substantial grounds in the above appeal which requires consideration; that the petitioner is in custody from 28.02.2023 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 Special Court for Exclusive Trial of Cases under POCSO Act, Chengalpattu
- (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



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(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.

19.12.2024

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Issue order copy by 20.12.2024
Upload the order copy forthwith.

To

1. The Special Court for Exclusive Trial of Cases under POCSO Act, Chengalpattu
2. The Inspector of Police,
All Women Melmaruvathur Police Station,
Chengalpattu District.
3. The Superintendent
Central Prison,
Puzhal, Chennai.
4. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J.

rgt

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