



CrI.M.P.No.13846 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.M.P.No.13846 of 2024  
in CrI.A.No.1239 of 2024

Murugesan

... Petitioner

Vs.

The State represented by Inspector of Police,  
Yethapur Police Station,  
Salem District,  
Crime No.229/2018.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 430 (1) of BNSS, to suspend the sentence and enlarge the petitioner on bail connected in Special S.C.No.143 of 2019 on the file of the learned Sessions Judge Principal Posco Court, Salem dated 21.11.2022 pending disposal of CrI.A.

For Petitioner : Mr.Manoj Vasanth

For Respondent : Mr.R.Vinoth Raja,  
Government Advocate (CrI.Side)



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### ORDER

The petitioner was convicted *vide* judgment, dated 21.11.2022 in S.S.C.No.143 of 2019 by the learned Sessions Judge, Principal Posco Court, Salem under Section 9(m) read with Section 10 of Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.2000/-. Aggrieved over the same, the present criminal appeal and the suspension of sentence.

2. The contention of the petitioner is that the petitioner and the victims are neighbors. There was some dispute with regard to sharing of common passage as well as get electricity connection from the petitioner's aunt house to the victims property where a construction is going on. Due to which the Petitioner had been falsely implicated. The victim girl PW2 has given an exaggerated version as though a penetrative sexual assault has been committed. The Doctor evidence and the medical records had proved that there is no commission of any penetrative sexual assault and for that reason though a charge sheet has been filed and though the Petitioner was charged for the offence under Section 5(m) read with 6 of the Protection of



Children from Sexual Offences Act, 2012, the Petitioner was convicted for the offence under Section 9(m) read with Section 10 of Protection of Children from Sexual Offences Act, 2012.

3. In this case, PW3 is the brother and PW9 is the father of the victim who had clearly stated about the enmity between both families. Further the Petitioner has been convicted and he is in prison from November 2022 i.e., for more than two years. Hence, this appeal.

4. The learned Government Advocate (Crl.Side) for the Respondent has filed a counter stating that the defacto complainant namely PW1 had lodged a complaint stating that her daughter/victim who is 11 years old was sexually assaulted on 28.05.2018 by the Petitioner when the victim had gone to the petitioner house to get electricity connection and took some time for her return. PW3 namely the victim's brother was sent to search for the victim and at that time he found that the victim girl crying and thereafter when required, she informed about the happenings and which was informed to PW1 namely the Petitioner's mother and a complaint has been lodged.



On receipt of the complaint from PW1, PW10 registered an FIR in Crime No.229 of 2018 and PW11 took up the investigation and visited the scene of occurrence and enquired the witnesses including the victim and the victim was produced before PW8. PW7 collector found that victim was a minor and confirmed the statement under Section 164 Cr.P.C. On conclusion of the investigation charge sheet filed before the Trial Court PW1 to PW11 and PW11 examined Ex.P1 to Ex.P18. Mo1 and Mo2 produced. On conclusion of the Trial, Trial Court had convicted Petitioner as stated above.

5.Considering the submissions and on perusal of the materials, it is seen that the Petitioner and the victim are neighbours residing without much difference of opinion. In fact, the case projected as victim girl / PW2 was sent to the house of the Petitioner by PW1 to collect some lime powder. Since it took some time for her to return, PW3 is said to have been sent there and at that time PW2 found the victim girl crying and when enquired, a sexual assault was disclosed. PW3 and PW9 are the brother and father of the victim girl admit dispute in the common passage used by them and further they objected for the Petitioner using the common passage and there



was a dispute. Added to it, the PW1 family members were constructing a house for which extension of power connection from the house of petitioner's aunt was requested which was objected by the petitioner. Hence, there was a dispute in this regard also, which are not seriously disputed. Further the case projected against the petitioner as if a penetrative sexual assault has been committed but the Doctor evidence PW9 and his report Ex.P9 to P12 confirms that there was no penetrative sexual assault and no external injuries. Thereafter only the Petitioner convicted for a lesser offence. In view of the above, this Court is inclined to grant suspension of sentence till the disposal of the criminal appeal.

6.In view of the above, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and he 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 the Trial Court.



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7.Further, the petitioner shall appear before the Trial Court once in three months commencing from November 2024 on the first working day at 10.30 a.m till the disposal of the criminal appeal. Accordingly, this Miscellaneous Petition is ordered.

25.10.2024

rgm



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To

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- 1.The Learned Sessions Judge Principal  
POCSO Court,  
Salem.
- 2.The Inspector of Police,  
Yethapur Police Station,  
Salem District.  
Crime No.229/2018.
- 3.The Central Prison,  
Coimbatore.
- 4.The Public Prosecutor,  
Madras High Court.



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M.NIRMAL KUMAR., J.

rgm

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