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Crl.M.P.No.15910 of 2024 in Crl.A.No.222 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.15910 of 2024

in

Crl.A.No.222 of 2024

Perumal

... Petitioner/Sole Accused

Vs.

The State Rep. by
The Inspector of Police,
Vishnukanchi Police Station,
Kancheepuram.
(Cr.No.419/2018)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (1) Cr.P.C., to suspend the sentence imposed in Spl.S.C.No.124 of 2019 (Spl.S.C.Old.No.80 of 2018) dated 05.01.2024 on the file of the learned Sessions Judge, Special Court for exclusive trial of POCSO Act cases, Chengalpattu and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.A.Antony Robson

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 05.01.2024 passed in Spl.S.C.No.124 of 2019 (Spl.S.C.Old



No.80 of 2018) on the file of the learned Sessions Judge, Special Court for exclusive trial of POCSO Act cases, Chengalpattu, and to enlarge the petitioner on bail pending disposal of the appeal.

2. (i) The case of the prosecution is that the petitioner with an intent to commit penetrative sexual assault on the victim girl entered into the house of the victim on 02.08.2018 at about 11.00 p.m., and had taken the victim to the petitioner's house and had attempted to commit penetrative sexual assault; that the eyewitness to the occurrence had called the neighbours and shouted for help; and therefore, the petitioner was apprehended.

3. The petitioner, was convicted by the trial Court for the offences under Sections 450 and 366 of the IPC and Section 10 r/w 9(m) of POCSO Act, 2012 and sentenced as follows:

Offence under Section	Sentence imposed
450 of IPC	To undergo RI for seven years and to pay a fine of Rs.5,000/-, in default to undergo SI for six months.
366 of IPC	To undergo RI for seven years and to pay a fine of Rs.5,000/-, in default to undergo SI for six months.
10 r/w 9(m) of POCSO Act, 2012	To undergo RI for five years and to pay a fine of Rs.5,000/-, in default to undergo SI for six months.
The sentences are ordered to run concurrently.	



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

5. The learned counsel appearing for the petitioner would submit that the case of the prosecution is improbable; that the very version of the prosecution that the petitioner entered into the house of the victim, where several family members were sleeping and had taken the victim without the knowledge of other persons in the house, is opposed to common sense and unbelievable; that the evidence of eyewitness is not believable; that there are arguable points in the above appeal, which requires consideration by this Court; that the petitioner is in custody from 05.01.2024 and therefore, the sentence imposed on the petitioner may be suspended.

6. The learned Government Advocate (Crl. Side) *per contra* submitted that the first bail petition has been dismissed by this Court by order dated 18.04.2024 and that there is no change in circumstances, therefore the same may be dismissed.



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7. Admittedly, the petitioner is in custody from 05.01.2024 and in custody for more than six months after the previous dismissal of bail petition. The petitioner has raised arguable points in the above appeal.

8. Therefore, considering the submission of the learned counsel for the petitioner, the above facts and the period of sentence of imprisonment imposed on the petitioner 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, Special Court for exclusive trial of POCSO Act cases, 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.

14.11.2024

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SUNDER MOHAN, J.

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- To
- 1.The Sessions Judge,
Special Court for exclusive trial of POCSO Act cases,
Chengalpattu,
 2. The Inspector of Police,
Vishnukanchi Police Station,
Kancheepuram.
 3. The Superintendent of Prisons,
Central Prison, Puzhal-1
 4. The Public Prosecutor,
Madras High Court.

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