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*Crl.M.P.No.13222 of 2024
in Crl.A.No. 1189 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2024

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.13222 of 2024

in

Crl.A.No. 1189 of 2024

Venkatesan

... Petitioner

Vs.

The State of Tamil Nadu,
Rep. by the Inspector of Police,
Neyveli All Women Police Station,
Cuddalore.
(Crime No.18 of 2021)

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(2) of Cr.P.C. / Section 430(2) of BNSS, to enlarge the petitioner on bail by suspending the sentence imposed on the petitioner by the Special Sessions Case Number 84 of 2021 on 04.09.2024 by the Special Court for Exclusive Trial of Cases under POCSO Act at Cuddalore pending disposal of the above criminal above appeal.

For Petitioner : Mr.R.Shanmugasundaram
for Shakeenaa A.G.

For Respondent : Mr.R.Vinothraja
Government Advocate (Crl. Side)



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ORDER

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The petitioner was convicted by the learned Sessions Judge, Cuddalore by judgment dated 04.09.2024 in Spl.S.C.No. 84 of 2021 and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/- in default to undergo three months for offence under Section 451 of IPC and sentenced to undergo rigorous imprisonment for a period of seven years for offence under Section 9(m), 10 of POCSO Act and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for a period of three months. Challenging the same, the present criminal appeal is filed with suspension of sentence petition.

2. The learned Senior Counsel appearing for the petitioner submit that in this case, the petitioner has been falsely implicated for the purpose of robbing the property of the petitioner who was the neighbour of the victim family. The petitioner and the victim are neighbours. It is projected that on 24.09.2021, the victim girl was taking bath in the bathroom at about 4.45 p.m., the petitioner is said to have jumped over the fence and committed a penetrative sexual assault. On the examination of the Doctor, it has been proved that there is no penetrative sexual assault and hence, the petitioner was convicted for a aggravated sexual assault. In this case, the occurrence



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has taken place on 24.09.2021 but, the complaint was given with a delay of four days i.e., 28.09.2024. Though an explanation has been sought to have been given for the delay of four days, the PW2 / mother of the victim deposed that the complaint was written by the Sub-Inspector of Police and on the other hand, the concerned Sub-Inpsector stated that P.W.2 had lodged a written complaint. The P.W.2 / mother admits that 2 1/2 months prior to the occurrence i.e., in month of July, the petitioner had suffered a fracture and he was not in a position of move freely and he had taken treatment. The petitioner produced the report and medical prescription during his examination and he gave explanation that he could not jump five feet height fence and move freely to commit the alleged offence.

3. Though the Trial Court had recorded the medical prescription and the report produced by the petitioner, it gave a finding that no medical evidence have been produced. It is not mandatory that in all circumstance, medical evidence have to be produced. The accused can give explanation which can be considered with a material produced. It is not the case that the medical report and the medical prescription produced by the petitioner is a created document, added to it, the admission of P.W.2 is that the petitioner had suffered a fracture. In this case, it is projected that the petitioner is said



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to have recorded P.W.1 / victim taking bath and he had committed sexual assault. The mobile not been seized. He further submit that in this case P.W.6, the Doctor who had examined the victim on 28.09.2021 had recorded in the medical report / Ex.P6 that there were no external injuries either in her body or in her private parts and further found that the victim had not attained puberty and the hymen was intact.

4. The learned Additional Public Prosecutor on their own sought to get an explanation that when force is not used, the penetrative sexual assault could have been made, which was objected. The Trial Court recorded the same but not answered the same at the time of rendering judgment. He further submitted that the name of the accused is recorded in the AR copy which would prove that the victim girl had been tuted for four days to falsely implicate the petitioner. Further submitted that when the foundation fact has been disputed, the question of invoking Section 30 that the petitioner had committed the offence would not arise.

5. The learned Government Advocate opposed the petitioner's contention and submit that P.W.2 is the mother of victim girl who had lodged the complaint to the respondent's Police. P.W.13 who received the complaint



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registered a case in Crime No.18 of 2021 and thereafter, handed over the investigation to P.W.14. P.W.14 investigation Officer examined the victim girl and produced her before the learned Magistrate. Before the Magistrate, she narrated the happenings and she had also deposed the same before the Trial Court. The mother of the victim P.W.1 confirms that the victim girl had informed her about the petitioner's sexual assault committed on her. P.W.1 is father who corroborates the evidence of P.W.1 & P.W.2 & P.W.4 gives explanation for the delay in lodging the complaint, since the family members felt that lodging the complaint would expose the victim girl to public glare and the same will effect her life. Thereafter, the complaint has been lodged hence, there was a delay. P.W.6 / Doctor issued a medical certificate had clarified that even without any mark on her chest and in private parts still sexual assault can be committed.

6. Further in this case, the victim had not been cross-examined and evidence stands unchallenged. The request of the counsel that he may be given one chance to cross entire P.W.1 was denied for the reason an adjournment earlier given not utilised may not be proper in view of the reason given by the Advocate who was conducted the trial. This Court find that the petitioner and the victim are neighbours. There is a fence of 5 feet



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tall which cannot be jumped over. The petitioner had sustained fracture two months prior to the occurrence and he was not even in a position to move freely, which was admitted by the P.W.2 / mother of the victim girl. The Medical report and presumption though received but not considered. P.W.6 / Doctor confirms that there is no injuries found on the victim including in her private parts the hymen joule intact, for the reason penetrative sexual assault disbelieved. In such circumstances the implication is very much there. In this case, the complaint lodged with a delay of four days and no proper explanation given. The case projected is that the petitioner has jumped the fence and thereafter entered the house. In view of the petitioner's fracture and health condition, the petitioner jumping over the fence is highly doubtful.

7. In view of the same, this Court finds that the conviction of the petitioner needs reconsideration. Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal revision:

(a) The petitioner/accused is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten



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thousand only) with two sureties, each for a like sum to the satisfaction of the learned Special Judge, POCSO Court, Cuddalore.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioner shall appear before the Trial Court on the first working day of every English Calendar once in three months at 10.30 a.m., until the disposal of the appeal and if he is not able to appear before the Trial Court on that 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.

8. Accordingly, this Criminal Miscellaneous Petition is ordered.

14.10.2024

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Index : Yes/No

Internet : Yes/No

Speaking order/Non speaking order

Neutral citation : Yes/No

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To

1. The Sessions Judge,
Special Court for Exclusive Trial of
cases under POCSO Act,
Cuddalore.
2. The learned Special Judge,
POCSO Court, Cuddalore.
3. The Inspector of Police,
Neyveli All Women Police Station,
Cuddalore.
4. The Superintendent,
Central Prison, Cuddalore.
5. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

KKN

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