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*Crl.M.P.No.17588 of 2023  
in Crl.A.No.1247 of 2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No17588 of 2023  
in Crl.A.No.1247 of 2023

Sirajdeen

...

Appellant/Accused

Vs.

State rep. by

1.The Deputy Superintendent of Police,  
Erode,  
Erode District.

2.Inspector of Police,  
Erode All Women Police Station,  
Erode, Erode District.  
(Crime No.31 of 2021)

...

Respondents / Complainant

3.K.Vijaya

...

Respondent / Defacto complainant

Prayer : Criminal Miscellaneous Petition has been filed under Section 389 (1) of Cr.P.C. praying to suspend the sentence and enlarge the petitioner on bail in Special S.C.No.77 of 2022 on the file of the Sessions Judge, Magalir Needhi Mandram, Fast Track Mahila Court, Erode) dated 25.08.2023, pending disposal of the above Criminal Appeal.



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For Petitioner : Mr.M.Vignesh  
For Respondent : Dr.C.E Pratap,  
Govt. Advocate (Crl.side)

### **ORDER**

This Criminal Miscellaneous Petition has been filed to suspend the sentence and enlarge the petitioner on bail in Special S.C.No.77 of 2022 on the file of the Sessions Judge, Magalir Needhi Mandram, Fast Track Mahila Court, Erode) dated 25.08.2023, pending disposal of the above Criminal Appeal.

2. It is the case of the prosecution that the petitioner and the victim were neighbours; and that the victim was brought up by her paternal grandmother; and that the petitioner who is running a grinder repair shop used to call the victim to his shop and ask her to hold his private part and thereafter commit penetrative sexual assault on the victim and threatened the victim that if she reveals the occurrence to anyone, she would face dire consequences.



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3. The trial court, on the basis of evidence, found that the offence of penetrative sexual assault was not made out; and that the petitioner had committed the offence of aggravated sexual assault and therefore liable to punishment under Section 9(m), 9(l) punishable under Section 10 of the POCSO Act. Hence, the petitioner/accused in Spl.S.C.No.77 of 2022 was convicted by the Trial Court by judgment dated 25.08.2023 for the offence under Section 9(m), 9(l) punishable u/s 10 of POCSO Act and sentenced to undergo Rigorous Imprisonment for 5 years and to pay a fine of Rs.10,000/- and in default of payment of fine thereof, to undergo further period of 3 months simple imprisonment.

4. The learned counsel for the petitioner would submit that the trial court, having disbelieved the case of the prosecution as regards penetrative sexual assault, ought to have disbelieved the version of the evidence even with regard to sexual assault; that the medical evidence does not corroborate the deposition of the victim; that the deposition of the victim is contrary to the other evidence on record; that the petitioner was falsely implicated by the grandmother of the victim; that she had borrowed money from the petitioner



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and did not repay the said sum; that to avoid repayment, she had that lodged the complaint; and that there are several arguable points in the above appeal which requires consideration. The learned counsel further submitted that the petitioner is in custody from 25.08.2023.

5. Though the petitioner was acquitted of the offence under SC/ST Act, this court had issued notice to the defacto complainant. The defacto complainant was present before this Court and requested this court to appoint a legal-aid counsel. Hence, this court appointed Mr.Gowtham, as legal-aid counsel.

6. Mr.Gowtham, learned counsel for the third respondent / defacto complainant would submit that the only basis for acquitting the petitioner for the offence of penetrative sexual assault is that the medical evidence did not corroborate the evidence of the victim; and that the victim's evidence is cogent and convincing ; and that the trial court had rightly convicted the petitioner; and that the petitioner has not made out any ground for suspension of sentence.



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7. The learned Government Advocate (crl.side), per contra submitted that the prosecution had established its case beyond reasonable doubt and that the offence for which the petitioner was convicted has been made out and prayed for dismissal of the petition.

8. Heard the learned counsel for the petitioner as well as the third respondent and the learned Government Advocate for the respondent and perused the records.

9. Admittedly, the petitioner is in custody from 25.08.2023. Considering the submissions made by the learned counsel for the petitioner and since the petitioner has raised substantial grounds which requires consideration in the above appeal, this court is inclined to grant the relief of suspension of sentence to the petitioner.

10. 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:



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- (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, Fast Track Mahila Court, Erode ;
- (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.

**03.12.2024**

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**Issue order copy by 05.12.2024**  
**Upload the order copy forthwith.**

**Note :** The District Legal Services Authority is directed to pay the scheduled fees to Mr.Gowtham, legal-aid counsel appointed by this Court, to assist this Court on behalf of the defacto complainant/third respondent.



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**To**

1. The Sessions Judge,  
Magalir Needhi Mandram,  
Fast Track Mahila Court,  
Erode

2.The Deputy Superintendent of Police,  
Erode,  
Erode District.

3.The Inspector of Police,  
Erode All Women Police Station,  
Erode, Erode District.

4.The Superintendent of Police  
Central Prison,  
Coimbatore.

5.The Public Prosecutor,  
High Court, Madras.



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**SUNDER MOHAN, J.**

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