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*Crl.M.P.No.13367 of 2024
in Crl.A.No.1204 of 2024*

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M. NIRMAL KUMAR, J.

The petitioner/accused in Spl.S.C.No.37 of 2023 was convicted by the learned I Additional District Judge, Sessions Court, Mahalir Neethimandram (Fast Track Mahila Court), Tiruppur dated 22.08.2024 and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three months simple imprisonment for the offence under Section 11(i) r/w. 12 of Protection of Children from Sexual Offices Act [POCSO Act] and to pay a fine of Rs.5,000/- for the offence under Section 506(ii) IPC. Against which, the present appeal and suspension of sentence petition filed.

2.The contention of the learned counsel appearing for the petitioner is that the petitioner is the Tea Master in a tea shop which is located in front of the Bakery. The victim girls/P.W.1 and P.W.2 usually sit in the passage to



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the Bakery and front of the tea shop and was chatting and shouting within them which was objected to by the petitioner and the owner of the tea shop. Getting offended to the same, the victim girls lodged a false case as though the petitioner took them to his room for where he hugged and kissed them and also attempted to touch their breast. The specific case of the victim girls is that the petitioner took the victim girls to his room attached to the Bakery and committed sexual assault. P.W.5, witness to the observation mahazar clearly speak about the availability of the room in the Bakery. In the case, the victim girls/P.W.1 and P.W.2 informed their parents, P.W.3 and P.W.4, who are their mothers and thereafter, complaint lodged. According to the petitioner, the victim girls have also not clearly stated about the time, place and the manner in which the sexual assault is said to have committed. He further submitted that the Trial Court had already suspended the sentence imposed on the petitioner. Hence, prayed for suspension of sentence.

3.The learned Government Advocate (Crl. Side) filed his counter and



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submitted that in this case the petitioner is working as a Tea Master in Sri Sivam Bakery. The victim girls/P.W.1 and P.W.2 used to stand in the Sri Sivam Bakery near bus stop which was taken advantage by the petitioner, later became friends with them and took them to the room attached to the Bakery where he attempted to touch the breast of the victim girls, hug them and kiss them, which the victim girls informed their parents and they lodged a complaint. On receipt of the complaint, the respondent police registered FIR, visited the scene of occurrence, prepared observation mahazar and rough sketch and on completion of investigation, charge sheet filed. During trial, P.W.1 to P.W.7 examined, Ex.P1 to Ex.P7 on the side of the prosecution and on the side of the defence, D.W.1 examined and no documents marked. The Trial Court on the evidence produced had rightly convicted the petitioner. He further submitted that the Trial Court had already suspended the sentence imposed on the petitioner.

4.Considering the submissions made and on perusal of the materials, it is seen that the petitioner is said to have committed the sexual assault on



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P.W.1 and P.W.2/victim girls. There was objection by the petitioner in people sitting in front of the shop and on the stairs of the shop and there was always constant quarrel in this regard. This fact has been confirmed by the evidence of D.W.1. From the evidence available, it is not clear as to whether a room is available and how the petitioner took the victim girls and committed sexual assault. Further, it is seen that the Trial Court had already suspended the sentence imposed on the petitioner. Hence, this Court finds that the conviction and sentence imposed by the Trial Court needs re-consideration.

5. 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.

6. Further, the petitioner shall appear before the Trial Court on the



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first working day of once in three months at 10.30 a.m. until the disposal of the criminal 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. Accordingly, this Miscellaneous Petition is ordered.

28.10.2024

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