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Crl.M.P.No.14232 of 2024 in Crl.A.No.1276 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.11.2024

PRONOUNCED ON : 26.11.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.14232 of 2024

in

Crl.A.No.1276 of 2024

Kurivithalaiyan @ Gokulakannan ... Petitioner/Sole Accused

Vs.

The State Rep. by
The Inspector of Police,
All Women Police Station,
Rasipuram, Namakkal District.
(Cr.No.10/2020) ... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 374 (2) of Cr.P.C., / 415 BNSS, to suspend the sentence imposed in Spl.C.C.No.10 of 2021 dated 11.06.2024 on the file of the learned Sessions Judge, Magalir Neethi Mandram (FTMC), Namakkal and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.M.Dinesh

For Respondent : Dr.C.E.Pratap
Government Advocate (Crl. Side)



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ORDER

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner/accused by judgment and order dated 11.06.2024 passed in Spl.C.C.No.10 of 2021 on the file of the learned Sessions Judge, Magalir Neethi Mandram (FTMC), Namakkal and to enlarge the petitioner on bail pending disposal of the appeal.

2. The case of the prosecution is that the victims who were the daughters of PW4 were aged about 12 years and 11 years respectively; that the victim's father was no more; that PW4, the victim's mother and her mother-in-law were living in the same house; that PW4's mother-in-law was immobile and sick; that PW4 used to work in day as well as night shifts; that using this opportunity, this petitioner and certain other persons used to go to the house of the victims, exploited them sexually by offering snacks and money; that therefore, the petitioner is guilty of the offences under Section 5(1) r/w 6 of the POCSO Act, 2012 (2 counts); that since the other accused had committed the offences separately, separate final reports were filed against them.



3. The trial Court convicted the petitioner for the offence under Section 5 (l) r/w 6 of POCSO Act (2 counts) and for each count sentenced him to undergo rigorous imprisonment for twenty years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months. The period of imprisonment imposed upon the petitioner in each counts were ordered to be run concurrently.

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

5. The learned counsel for the petitioner would submit that the case of the prosecution is improbable; that the victims were staying with other family members including their brothers and therefore, it could not have been possible for the petitioner to commit penetrative sexual assault; that independent witnesses examined viz., PW18 and PW19 turned hostile; that in view of the contradictions in the evidence of victims, the judgment of the trial Court cannot be sustained; that the petitioner is in custody since 11.06.2024; and that therefore, the sentence imposed on the petitioner may be suspended.



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6. The learned Government Advocate (Crl.Side) appearing for the respondent/State *per contra* would submit that the 1st victim-PW1 had identified the petitioner that he used to have sexual intercourse everyday when her mother was away for work; that similarly, the 2nd victim-PW2 also had stated that the petitioner committed penetrative sexual assault; that the statement of the victims had been consistent and their evidence is corroborated by their version in the Section 164 Cr.P.C. statements; that the evidence of Doctor-PW12 is that the hymen of the victim girls was ruptured; and that considering all these aspects, the trial Court had rightly convicted the petitioner and hence, no ground is made out for suspension of sentence.

7. Considering the submissions made on either side and on perusal of the deposition of the victims, this Court is of the view that no case has been made out for suspending the sentence imposed on the petitioner and hence, this Court is inclined to dismiss the petition for the present.

8. Accordingly, this Criminal Miscellaneous Petition stands dismissed.



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SUNDER MOHAN, J.

ars

- To
1. The Sessions Judge,
Magalir Neethi Mandram (FTMC), Namakkal.
 2. The Inspector of Police,
All Women Police Station,
Rasipuram, Namakkal District.
 3. The Superintendent of Prisons,
Central Prison, Salem.
 4. The Public Prosecutor,
Madras High Court.

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