



Crl.M.P.No.13748 of 2024 in Crl.A.No.157 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.13748 of 2024
in Crl.A.No.157 of 2024

Syed Thurabadin,
S/o.Late Md.Sirajudin

... Petitioner

Vs.

State Represented by,
Inspector of Police,
W-13, All Women Police Station,
Old Washermenpet,
Chennai - 600021.
Crime No.5 of 2023.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of Code of Criminal Procedure/430(1) of BNSS, to suspend the sentence vide judgment dated 30.11.2023 in Spl.S.C.No.193 of 2023 on the file of Sessions Judge Special Court for Exclusive Trial of Cases under POCSO Act convicting the petitioner under Section 6 of POCSO Act, 2012 and sentenced him to undergo RI for 20 years and to pay fine of Rs.5,000/- (Rupees five thousand only) in default to undergo Simple Imprisonment for 3 months and under Section 506(1) of the Indian Penal Code, sentenced to



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imprisonment for 6 months and enlarge the petitioner on bail pending disposal of the above main criminal appeal.

For Petitioner : Mr.G.Krishnamurthy
For Respondent : Mr.R.Vinothraja,
Government Advocate (Crl. Side)

ORDER

The petitioner was convicted *vide* judgment, dated 30.11.2023 in Special S.C.No.193 of 2023 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai (Trial Court) and sentenced to undergo 20 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default to undergo three months Simple Imprisonment for offence under Section 6 of The Protection of Children from Sexual Offence Act, 2012 and for offence under Section 506(i) of IPC, the petitioner sentenced to undergo imprisonment for six months. Aggrieved over the same, the present criminal appeal and the suspension of sentence.

2.The learned counsel for the petitioner submitted that the petitioner is the biological father of the victim girl and PW1 & PW3 are mother and



grandmother of the victim girl. PW1 was always objecting the petitioner's way of life in not properly taking care of the victim girl and always drinking alcohol. Out of marriage between the petitioner and PW1, they have three children, of which PW2 is the middle child. It is projected that during the last week of April, 2023 after Ramzon festival when the victim girl was alone at her home, at about 01.00 p.m the petitioner made the victim girl to stand on his front, removed her pant, put his mouth on her vagina and also spread sperm on her vagina. The petitioner threatened the victim girl not to disclose the same to anyone otherwise she and her mother would be harmed. Later the mother of the victim girl lodged a complaint and FIR registered. He further submitted that the matrimonial discord between the petitioner and her wife/PW1 is not in dispute. In fact PW1 admits that she had doubt against the petitioner having relationship with another woman and at times he was not staying with her. The mother of the victim girl (PW1) is working in a hospital and taking care of all the three children. It has been projected as though the petitioner poured milk on the private part of the victim girl, kept his mouth and licked the milk. In this case, no such articles for such allegation seized from the scene of occurrence. Taking advantage of the



victim girl's innocence and with the aid of the grandmother of the victim girl (PW3), the petitioner framed up in this case which the Courts below failed to consider. In this case, PW1 admits that she was living adjacent to the house of PW3 and PW1's children used to stay in both houses. The petitioner used to go for work and come back to home in the late hours that to in a drunken stage. When and how the alleged occurrence had taken place, there is no materials or details. The Observation Mahazar witness (PW4) does not state about the physical features of the room. In this case, the victim girl gives different version and the prosecution projected a different version with regard to the occurrence proper. These facts not considered by the Trial Court. DW1 is the sister of the petitioner, DW2 is the petitioner and DW3 is the employee of the petitioner. The Trial Court not considered the evidence of defence witnesses. Hence, prays for suspension of sentence.

4.The learned Government Advocate (Crl. Side) appearing for the respondent Police submitted that on the complaint of the mother of the victim girl (PW1), a case registered by the respondent Police in Crime No.5



of 2023 for offence under Sections 6 & 9(m) r/w 10 of The Protection of Children from Sexual Offence Act, 2012 and later the offences altered to Section 6 r/w 9(m) r/w 10 of The Protection of Children from Sexual Offences Act, 2012 and Section 506(ii) of IPC. During trial, on the side of the prosecution, PW1 to PW6 examined and Exs.P1 to P8 marked. On the side of the defence, DW1 to DW3 examined and marked Exs.D1 & D2. PW1 is the mother of the victim girl who corroborated the statement of the victim girl. The victim girl confirmed her earlier statement under Section 164 Cr.P.C. PW3 is the maternal grandmother of the victim girl who confirmed the statement of the victim girl and her daughter/PW1. PW4 is the Observation Mahazar witness who attested the Observation Mahazar (Ex.P4). PW5 and PW6 are the Investigating Officers who completed the investigation and filed charge sheet before the Trial Court. The Trial Court on the evidence and materials produced rightly convicted the petitioner.

5.Considering the submissions and on perusal of the materials, it is seen that PW1 is the mother of the victim girl who gives exaggerated version initially in the complaint and in her evidence. It has been projected



as though semen of the petitioner found on the lower stomach of victim girl.

In the evidence it has been projected as though the petitioner poured milk on the private part of the victim girl, licked the same which is a clear marked improvement. Added to it, from the scene of occurrence, no materials collected to prove that the petitioner used a cup of milk for his act. It is also seen that in the adjacent house of the victim girl, her grandmother is living. Apart from the petitioner, the petitioner has got elder brother and younger sister but no one examined. PW3 admits that the petitioner was having extra marital affair which was objected and there was difference of opinion between the petitioner and her wife/PW2 in this regard.

6.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.



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7.Further, the petitioner shall appear before the Trial Court once in three months commencing from November 2024 on the first working day at 10.30 a.m till the disposal of the criminal appeal. Accordingly, this Miscellaneous Petition is ordered.

28.10.2024

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To

- 1.The Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act,
Chennai.
- 2.The Inspector of Police,
W-13, All Women Police Station,
Old Washermenpet,
Chennai - 600021.
- 3.The Central Prison,
Puzhal.
- 4.The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR, J.

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