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Crl.M.P.No.17278 of 2023
in Crl.A.No.1204 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.02.2024

PRONOUNCED ON : 28.02.2024

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.17278 of 2023

in

Crl.A.No.1204 of 2023

Kannan

S/o.Thangavel

... Petitioner/Sole Accused

Vs.

State represented by

The Inspector of Police,

All Women Police Station,

Avinashi, Tiruppur District.

(Crime No.5 of 2020)

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence and enlarge the petitioner on bail imposed in S.C.No.63 of 2020 dated 18.04.2023 passed by the learned Sessions Judge, Magalir Needhi Mandram (Fast Track Mahila Court), Tiruppur, pending disposal of the above Criminal Appeal.

For Petitioner : Mr.M.Vignesh

For Respondent : Mr.R.Kishore Kumar

Government Advocate (Crl. Side)



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner to suspend the sentence of imprisonment imposed on him in the judgment dated 18.04.2023 made in Spl.S.C.No.63 of 2020 on the file of the learned Sessions Judge, Magalir Needhi Mandram (Fast Track Mahila Court), Tiruppur and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/Accused in Spl.S.C.No.63 of 2020 was convicted by the trial Court by judgment dated 18.04.2023 for offences under Section 9(m) r/w 10 of 'Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') and sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.5,000/-, against which, the petitioner has filed the above appeal along with suspension of sentence petition.



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3.Before the Trial Court, on the side of the prosecution P.W.1 to P.W.7 examined, Ex.P1 to Ex.P11 marked. On the side of defence, no witnesses examined and no documents marked. On completion of trial, the Trial Court convicted the petitioner as stated above.

4.The contention of the learned counsel for petitioner is that the petitioner has been falsely implicated in this case. The petitioner had taken a loan from the victim's grandfather and he was unable to repay the same and there was some dispute between the petitioner and de-facto complainant's family, using the victim girl a false case lodged against the petitioner. He further submitted that the victim admits that she does not know the petitioner but petitioner used to visit his grandfather and talk with him, probablisising that the petitioner had transaction only with the victim's grandfather.

4.1.The case projected as though on 16.07.2020 at about 2.00 p.m. when the victim girl was watching TV in her house, the petitioner said to have entered into the house, took her to the bathroom, forced the victim girl



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to give him a kiss, which she refused. Thereafter, the petitioner said to have kissed on her left cheek. Further attempted to remove her clothes and molested her. At that time, the victim girl shouted and called her neighbour, namely, Jamuna. The petitioner lift the victim girl by holding her neck at that time, unable to bear the pain she bitten the right hand of the petitioner and thereafter, she opened the bathroom door and cried for help. PW3, the mother of the victim girl, who was drying the clothes in the backyard came there, enquired and thereafter lodged a complaint on the next day. No reason has been given as to why there was a delay in lodging the complaint. Further, when the victim girl was examined by PW2/Doctor, nothing recorded in Ex.P1/Accident Register.

4.2. Further from the evidence of PW1 it is seen that she was lifted by neck and she got a bang on the head in the ceiling of the bathroom and she suffered pain both on the neck as well as on her head. The Doctor/PW2, who examined the victim has stated that no such corresponding injury found



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medically. He further submitted that the victim's mother/PW3 states that she was very much in the house and at that point of time she was drying the clothes. Further, in this case the said Jamuna, who is said to have entered the house along with PW3 and enquired the victim, not examined. It is not rationally proper that a person without any reason entered the house, took the victim girl to the bathroom and committed such an act. Initially the complaint was made as though the petitioner committed penetrative sexual assault. The Doctor evidence and other attendant circumstances clearly proved that no such act has been committed. In this case the evidence of PW1 and PW3 are highly doubtful, motivated and it is admitted by both PW1 and PW3 that the petitioner had taken loan from PW3's father and there was some dispute between them. PW4, a relative, is the observation mahazar witness. Thus he had probalilise his defence that he had been falsely implicated, which the trial Court failed to consider. Hence, prayed for suspension of sentence.



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5.The learned Government Advocate (Crl. Side) filed a counter and submitted that the case of the prosecution is that on 16.07.2020 at about 02.00 P.M., the victim girl namely Selvi. Pushpasri, aged about 11 years [Date of Birth: 02.06.2009] was playing in front of her house, the accused have forcibly took the victim to bathroom and molested and kissed her and trying to rape the victim girl and also tried to misbehave her, but victim escaped from him. Hence the complaint. Based On the above complaint, a case was registered in All Women Police Station, Avinashi, Tiruppur in Crime No.05 of 2020 for offence under Section 5(m)(r) r/w.6 of POCSO Act 2012 on 17.07.2020 and submitted before the then Inspector of Police, All Women Police Station, Avinashi and she took up the case for investigation. During the course of investigation, the then investigation officer went to the scene of occurrence and drew rought sketch and prepared observation mahazar in the presence of witnesses and examined the witnesses and recorded their statements.



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5.1. Further submitted that during the investigation, on 17.07.2020

at about 01.00 hours the then Inspector of Police arrested the accused and recorded his confession statement and produced him before the Learned Mahila Court and remanded him into Judicial custody. Based on the witnesses statement and medical evidence, the then Inspector of Police altered the offences under section 5(m)(i) r/w.6, 9 (m), r/w.10 of POCSO Act.

After completion of elaborated and detailed investigation, on 17.09.2020, the then Inspector of Police filed a charge sheet before the Learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Tiruppur and the same was taken on file and assigned Spl.S.C.No.63 of 2020, dated 28.10.2020. The trial court framed charges against the accused u/s.5 (m), r/w.6, 5 (i), r/w.6 & 9 (m), r/w.10 of POCSO Act. During trial, the prosecution has examined 7 witnesses and marked 11 exhibits and no material object was marked. On defence side no witness, no exhibit and no material object were marked.



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5.2. He further submitted that the victim in this case is a minor aged about 11 years and studying 7th standard at the time of occurrence, which is not disputed. On 16.07.2020, when the victim girl was alone at home, the petitioner entered into the house, committed sexual assault, which clearly deposed in her evidence, which is corroborated with the evidence of her mother/PW3. The Trial Court considering the evidence in this case had rightly convicted the petitioner. Hence, prays for dismissal.

6. Considering the submission made and on perusal of the materials available on record, it is seen that the victim/PW1 admits that she does not know the petitioner earlier and the incident on 16.07.2020 is a solitary one. It is highly improbable that a person having nothing to do with the victim enters the house, drags her to bathroom a few yards away when victim's mother was very much available in the backyard drying the clothes. The observation mahazar/Ex.P5 and rough sketch/Ex.P8 would confirm that there are nearby adjacent houses to the scene of occurrence. PW2/Doctor, who examined the



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victim girl, in the medical reports/Exs.P1 and P3 had not recorded any corresponding injury on the neck or on the head of the victim, when the victim had specifically stated that she had sustained injury on the head due to the impact on the ceiling of the bathroom when the petitioner lifted by force by holding her neck. The act of the petitioner holding the victim by neck and molested her by removing clothes also doubtful. There is no mark or injuries found in any part of the body of the victim. There is also a delay in lodging the complaint. Further, the petitioner was examined by the Doctor and no bite marks found.

7.Added to it, PW1/victim and PW3/mother of the victim confirmed that the petitioner taken loan from the grandfather of the victim and thereafter some dispute with regard to the recovery of loan and the petitioner failed to repay the loan amount. This attendant facts have not been considered. Added to it, the trial Court had framed charges against the petitioner under Sections 5(m) r/w 6, 5(i) r/w 6 and 9(m) r/w 10 of the



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POCSO Act. On the evidence and materials, acquitted the petitioner for offence under Sections 5(m) r/w 6, 5(i) r/w 6 of POCSO Act, but on the same set of facts convicted the petitioner, which needs reconsideration. Further taking note of the fact that there are arguable points involved in this appeal and it would take some time for the appeal to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioner.

8. Accordingly, the relief of suspension of sentence and bail are granted to the petitioner on the following conditions till the disposal of the above Criminal Appeal:

(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 thousand only), with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Magalir Needhi Mandram (Fast Track Mahila Court), Tiruppur.



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(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Judge 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 once in three months at 10.30 a.m. on the first working day of the month, 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.

9. Accordingly, this Criminal Miscellaneous Petition is ordered.

28.02.2024

Index : Yes/No

Speaking order / Non-speaking order

Neutral Citation : Yes/No

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M.NIRMAL KUMAR, J.

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To

- 1.The Inspector of Police,
All Women Police Station,
Avinashi, Tiruppur District.
- 2.The Sessions Judge,
Magalir Needhi Mandram (Fast Track Mahila Court),
Tiruppur.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.

Pre-delivery order in
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