



*Crl.M.P.No.14327 of 2024
in Crl.A.No.134 of 2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.14327 of 2024

in

Crl.A.No.134 of 2023

Singaravel

...

Petitioner /Accused

Vs.

State represented by
The Inspector of Police,
Salavakkam Police Station,
Chengalpattu District.
(Crime No.508 of 2015)

... Respondent / Complainant

PRAYER: Criminal Miscellaneous Petition has been filed under Section 430(1) of BNSS Act praying to suspend the sentence imposed in Spl.C.C.No.31 of 2019 dated 23.01.2023 on the file of Special Court for POCSO Act, Chengalpattu and enlarge the petitioner on bail, pending disposal of the above Criminal Appeal.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Dr.C.E Pratap,
Govt. Advocate (Crl.side)



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner to suspend the sentence imposed in Spl.C.C.No.31 of 2019 dated 23.01.2023 on the file of Special Court for POCSO Act, Chengalpattu and enlarge the petitioner on bail, pending disposal of the above Criminal Appeal.

2. The case of the prosecution is that the victim is a mentally challenged person and that the petitioner who was neighbour had committed penetrative sexual assault on 22.10.2015 when the victim went to the back side of the house for attending nature's call.

3. The petitioner/accused in Spl.S.C.No.31 of 2019 was convicted by the Trial Court by judgment dated 23.01.2023 under Section 4 of POCSO Act 2012 and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/- and in default thereof, to undergo simple imprisonment for a period of 1 year and under Section 354(b) of IPC, sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.5,000/- and in default thereof, to undergo simple imprisonment for 6 months. Aggrieved by



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the same, the petitioner/accused filed Crl.A.No.134 of 2023 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. The learned counsel for the petitioner would submit that the earliest version in the FIR is that the petitioner is said to have touched the victim girl inappropriately in her breast ; that Ex.P15-Accident Register would state that the petitioner had sexually assaulted the victim on two occasions; that PW2, the victim had stated in her deposition that the petitioner had touched the parts of her body inappropriately and that the evidence of the mother of the victim and other witnesses would show that the victim was aged more than 18 years.

5. The learned Government Advocate (crl.side) appearing for the respondent, per contra, would submit that the victim is a mentally challenged person and that PW3 who had translated the victim's statement who had clearly deposed the victim's statement made before the respondent police and that the other evidence on record would clearly establish the guilt of the accused and therefore the petitioner has not made out any case for suspension of sentence and prayed for dismissal of the petition.



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6. Heard the learned counsel for the petitioner as well as learned Government Advocate (crl.side) appearing for the respondent and perused the records.

7. On perusal of the records, it is seen that the victim -PW2 would state in her deposition that the petitioner touched her inappropriately. The earliest version even given in the FIR is that the petitioner touched the victim inappropriately. The entries in the accident register also confirms the said fact. It is also seen that the victim had not suffered any external injuries. Therefore, this Court is of the view that there is force in the submissions made by the learned counsel for the petitioner that the offence of penetrative sexual assault is not made out.

8. Considering the fact that the petitioner is in custody from 23.01.2023 and that there are arguable points in the above appeal and the period of incarceration imposed by the trial court, this Court is inclined to grant the relief of suspension of sentence to the petitioner.



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9. 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:

- (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 Special Court for POCSO Act, Chengalpattu ;
- (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.

18.11.2024

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Issue order copy by 20.11.2024
Upload the order copy forthwith.



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SUNDER MOHAN, J.

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To

1.The Special Judge for POCSO Act,
Chengalpattu.

2. The Superintendent,
Central Prison,
Puzhal,
Chennai.

3.The Inspector of Police,
Salavakkam Police Station,
Chengalpattu District.

4.The Public Prosecutor,
High Court, Madras.

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