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Crl.M.P.No.14076 of 2024 in Crl.A.No.1265 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.14076 of 2024
in Crl.A.No.1265 of 2024

Marimuthu

...Petitioner/Appellant/Accused

Vs.

The State Rep. by
The Inspector of Police,
All Women Police Station,
Nagapattinam
(Cr.No.11/2022)

...Respondent/Respondent/Complainant

PRAYER: Criminal Miscellaneous Petition filed under Section 430 of BNSS/389 of Cr.P.C., to suspend the sentence imposed in Spl.S.C.No.63 of 2022 dated 18.09.2024 on the file of the learned Sessions Judge, Special Court for Exclusive Trial cases under POCSO Act, Nagapattinam and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.A.M.Venkata Krishnan

For Respondent : Mr.V.J.Priyadarsana
Government Advocate (Crl. Side)
assisted by Ms.A.Shahana Fathima



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ORDER

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This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment and order dated 18.09.2024 passed in Spl.S.C.No.63 of 2022 on the file of the learned Sessions Judge, Special Court for Exclusive Trial cases under POCSO Act, Nagapattinam, and to enlarge the petitioner on bail pending disposal of the appeal.

2. The petitioner, who was arrayed as an accused in the above Sessions Case, was convicted and sentenced as follows:

Offence under Section	Sentence imposed
341 of the IPC	sentenced to undergo simple imprisonment for one month and to pay a fine of Rs.500/- in default to undergo simple imprisonment for one week.
10 r/w 9(1)(m) of the POCSO Act	sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for one year.
12 r/w 11(iv) of the POCSO Act	sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5000/- in default to undergo simple imprisonment for six months.
Sentences were ordered to run concurrently.	



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3. Challenging the above conviction and sentence, the petitioner has filed the above Criminal Appeal and he seeks suspension of sentence and bail in the present petition.

4. Heard Mr.A.M.Venkata Krishnan, learned counsel for the petitioner and Mr.V.J.Priyadarsana, learned Government Advocate (Crl.Side) appearing for the respondent/State.

5. The case of the prosecution is that the petitioner was the victim's neighbour; that eight months prior to the occurrence, the petitioner had committed sexual assault by fondling the breast of the child; and that one month prior to the occurrence, he had once again fondled the breast and committed aggravated sexual assault.

6. The learned counsel for the petitioner/appellant would submit that the evidence of the victim is contrary to her Section 164 Cr.P.C., statement; and that the complaint was lodged belatedly; that a false complaint was lodged since there was enmity due to money dispute between the mother of the victim and the petitioner and hence, he prayed



that the sentence imposed on the petitioner/accused may be suspended.

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7. The learned Government Advocate (Crl. Side) *per contra* submitted that the prosecution case has been established beyond reasonable doubt and the minor contradictions pointed out by the learned counsel for the petitioner would not affect the prosecution case in any manner and prayed for dismissal of the petition.

8. This Court, on perusal of the Judgment of the trial Court and the other evidence produced by the petitioner, finds that there are some contradictions in the evidence of the witnesses besides the contradictions in the victim's deposition with her Section 164 Cr.P.C., statement, which has to be examined in detail while hearing the appeal. Since there are arguable points in the above appeal and the petitioner is in custody from 18.09.2024, the petitioner is entitled to suspension of sentence.

9. Therefore, considering the above facts, the period of incarceration and also the fact that the appeal is not likely to be taken up in the near future, this Court is inclined to grant the relief of suspension of sentence to the petitioner herein.



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10. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioner, is suspended and he is ordered to be enlarged on bail on the following conditions:

- (i) the petitioner shall execute a bond for a sum of Rs.50,000/-, with two sureties, for a like sum to the satisfaction of the learned Sessions Judge, Special Court for Exclusive Trial cases under POCSO Act, Nagapattinam;
- (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 their absence, as directed by the trial Court.

04.11.2024

dk



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Issue order copy by 07.11.2024
Upload the order copy forthwith.

To

1. The Sessions Judge, Special Court for Exclusive Trial
cases under POCSO Act.
Nagapattinam
2. The Inspector of Police,
All Women Police Station,
Nagapattinam.
3. The Superintendent of Prisons,
Central Prison, Cuddalore.
4. The Public Prosecutor,
Madras High Court.



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SUNDER MOHAN, J.

dk

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