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Crl.M.P. No. 17451 of 2023
in
Crl.A. No. 1238 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2024

CORAM

THE HON'BLE MR. JUSTICE M. NIRMALKUMAR

Crl.M.P. No. 17451 of 2023

in

Crl.A. No. 1238 of 2023

Karuppaiya

..Petitioner

Vs

State rep. by
The Inspector of Police,
Singanallur Police Station,
Coimbatore City,
Coimbatore District.
(Crime No. 594 of 2019)

..Respondent

Prayer: Petition to suspend the sentence imposed in Special C.C. NO. 87 of 2019 on the file of Principal Special Court for exclusive trial of cases under POCSO Act, Coimbatore by judgment dated 31.10.2022 and enlarge the petitioner on bail pending disposal of the appeal.



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For Petitioner :: Mr.M. Vignesh
For Respondent :: Mr.R. Vinothraja
Govt. Advocate
(Crl.Side)

O R D E R

The petitioner/accused in Special C.C. No. 87 of 2019, by judgment dated 31.10.2022, was convicted by the Principal Special Court for exclusive trial of cases under POCSO Act, Coimbatore for the offence under Section 9(m) (2 counts) r/w Section 10 of POCSO Act and sentenced to undergo 7 years rigorous imprisonment on each count (totally 14 years) and to pay a fine of Rs.10,000/- on each count (Rs.20,000/- in total) carrying a default sentence of one year simple imprisonment on each count under Section 10 of POCSO Act. As against the said conviction and sentence, the present appeal has been preferred along with this petition for suspension of sentence and bail.



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WEB COPY 2. The gist of the prosecution case is that on 01.04.2019 in the afternoon, the petitioner/accused came to the house of the complainant and gave his mobile phone to P.W.6/victim stating her father is on the other end and wanted to talk to her. At that time, P.W.3, the other victim was also present. Even after P.W.6 finished talking to her father, the petitioner/accused continued to stay in the house of the complainant, sat on the bed and made both the victims to sit next to him. Then the petitioner is said to have touched both the victims on their back and their chest and kissed them with sexual intent. The children pushed the accused, ran out from the house, locked the door from outside and informed the neighbour/P.W.13. On getting informed, P.W.13 came to the house of P.W.1 opened the door, questioned the petitioner/accused. The petitioner then ran away from the scene of occurrence. While running away, the petitioner had a fall and sustained injuries. On the next day, i.e., 02.04.2019, the complaint was lodged.



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3. The contention of the learned counsel for the petitioner is that there was some misunderstanding between P.W.4 father of P.W.3 one of the victim. The petitioner was called by P.W.1 who requested the petitioner to visit his house, make her daughter speak to him. For this reason, the petitioner said to have gone to the house of P.W.1, asked P.W.6 his daughter to speak to her father, thereafter not left the place, sat in the cot, made inappropriate touch both on P.W.3 and P.W.6. The evidence of P.W.3 and P.W.6 are contradictory to each other. It is projected that the petitioner forced both the victims to play game using his mobile, at that time he touched the back and chest of the victims. Both the victims ran out of the home, locked the door and informed P.W.13, a neighbour who came and opened the door questioned the petitioner. The evidence of P.W.13 is that when he came and saw the petitioner standing outside the house which is contrary to the version given by the victims that they had locked the door. The victims under tutelage gave false version as though the petitioner ran away, had a fall, sustained injuries when P.W.13 questioned. On the other hand, the evidence of P.W.2 and P.W.4 is that P.W.1 and P.W.4 questioned



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the accused and also beaten him. Further, learned counsel for the petitioner submitted that in this case, the petitioner was assaulted by three persons. He was beaten black and blue and he took treatment as an in-patient in Coimbatore Medical College Hospital for two days from 01.04.2019 to 02.04.2029. At that time, x-ray taken and hospital records confirmed that there was no fracture or dislocation and no evidence of hemopneumothorax. But the petitioner suffered serious injuries as could be seen from x-ray and scan of abdomen taken on 01.04.2019. The petitioner was rushed to the hospital by 108 Ambulance. On these facts, P.W.12/Investigating Officer questioned. Though P.W.11 admits the same, but not conducted any investigation in this regard since it would affect the projected prosecution case. Hence, no evidence produced and withheld. The Trial Court failed to take adverse inference. The learned counsel submitted that these documents unable to be produced during trial since he had no access to the same. But P.W.12 admits the treatment taken by the petitioner in the Government Hospital as inpatient. In this background, considering the evidence of P.W.3 and P.W.6 would clearly prove it is an exaggerated version doubtful and



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ought to have been rejected. The act of the petitioner with sexual intent could have been confirmed only by examining the victims by a Doctor to find out whether there was any marks on them which would lead to inference of sexual intention. In this case, the victims not produced for medical examination. The learned counsel would therefore pray for suspension of sentence.

4. On the other hand, learned Government Advocate (Crl.Side) has filed counter and submitted that P.W.1/father of the victim/P.W.6, on getting information from P.W.13 enquired his daughter and the other victim P.W.3. Thereafter, P.W.1 lodged a complaint with P.W.10 on 02.04.2019 at 04.00 p.m who had registered the FIR, Ex.P14. P.W.11, Inspector of Police, All Women Police Station, Coimbatore, took up further investigation, visited the scene of occurrence, prepared Observation Mahazar and rough sketch. The victims enquired, statements recorded and later produced before the Judicial Maistrate No.V for recording their statements under Section 164 Cr.P.C., marked as Exs.P5 and P12. The parents of the victims P.W.1, P.W.2, P.W.4



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and P.W.5 correlated the evidence of P.W.3 and P.W.6/victims. P.W.13, a neighbour confirms the presence of the petitioner in the house of PW1 at the time of occurrence. According to the learned Government Advocate (Crl.Side), the evidence of the victims is natural and the Trial Court, on the evidence of witnesses and documents had rightly convicted the petitioner and sought for dismissal of this petition.

5. Considered the submissions and perused the materials on record.

6. The petitioner had gone to the house of P.W.1. On his request, the petitioner handed over his mobile to P.W.6 to speak to his father. Thereafter, the petitioner stayed there, sat on the cot and made improper touch. The version of P.W.3 and P.W.6 are contradictory. Further, P.W.3 and P.W.6 gives an improvised statement on the injuries sustained by the petitioner. P.W.1 and P.W.4 admits going to the house of the petitioner questioning him, at that time the petitioner is said to have taken to his heels,



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fell down, sustained injury. P.W.2 admits the petitioner was assaulted by P.W.1 and P.W.4. The Investigating Officer/P.W.12 about the petitioner taking treatment as inpatient in Coimbatore Medical College Hospital. The medical records available in the case diary. The arrest of the accused also becomes doubtful.

7. On perusal of the case diary, which is available with the respondent/Police, this Court finds that there are medical records to show that the petitioner sustained injury on 01.04.2019. It is recorded that the petitioner was assaulted around 3 pm and he had severe pain on his back and right hip. The petitioner took treatment as an in-patient for two days from 01.04.2019 to 02.04.2019. In this case, the arrest of the petitione/accused is shown to have been made on 03.04.2019 but the injuries sustained by him have been attributed to the petitioner falling down while running away from the scene of occurrence. To the contrary, in the medical records, it is recorded that the petitioner was assaulted by three persons. In any event, the true facts have not been putforth before the Trial Court.



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Further, it is seen that the victims gave exaggerated version. Admittedly, the victims were not produced for medical examination to find out any marks which would confirm the force and intensity of the act of the petitioner to prove the act was with sexual intent. In such circumstance, the evidence of P.W.s 3 and 6 have to be considered cautiously and the conviction of the petitioner/accused under Section 9(m) (2 counts) of POCSO Act needs reconsideration.

8. Accordingly, the relief of suspension of sentence and bail are granted 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 Principal Special Court for exclusive trial of cases under POCSO Act, Coimbatore.



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(b) The petitioner shall appear before the Trial Court on the first working day of every English Calendar 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 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. The criminal miscellaneous petition is ordered accordingly.

26.09.2024

nv

(Note to Office: Issue order copy on 30.09.2024)

To

1. The Principal Special Court for exclusive trial of cases under POCSO Act, Coimbatore.
2. The Inspector of Police,
Singanallur Police Station,
Coimbatore City,

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3. The Superintendent,
Central Prison, Coimbatore.
4. The Public Prosecutor,
High Court, Madras.



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M. NIRMALKUMAR,J.

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