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Crl.M.P.No.17385 of 2023
in Crl.A.No.1233 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.No.17385 of 2023

in

Crl.A.No.1233 of 2023

Anand
S/o.Vijayaraj

... Petitioner/Accused

Vs.

State Rep. by:
The Inspector of Police,
All Women Police Station,
Thiruvannamalai,
Thiruvannamalai District.
(Crime No.7 of 2019).

... Respondent/Complainant

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) r/w 439 of Code of Criminal Procedure, to suspend the sentence imposed by the learned Special Court, POCSO Cases, Thiruvannamalai, Thiruvannamalai District in Spl.S.C.No.57 of 2020 dated 25.08.2023 and enlarge the petitioner on bail pending disposal of the above criminal appeal.

For Petitioner : Mr.L.Mahendran

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



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ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the learned Sessions Judge, Special Court for POCSO Cases, Thiruvannamalai, Thiruvannamalai District in Spl.S.C.No.57 of 2020 dated 25.08.2023 and enlarge the petitioner on bail pending disposal of the above criminal appeal.

2.The petitioner/accused in Spl.S.C.No.57 of 2020 was convicted by the Trial Court by judgment dated 25.08.2023 for offences under Sections 376(2)(n) of IPC and Section 6 r/w 5(1) of POCSO Act, 2012 and sentenced him to undergo ten years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo one year simple imprisonment. Aggrieved against his conviction, the petitioner had filed an appeal before this Court in Crl.A.No.1233 of 2023 along with the instant miscellaneous petitions seeking suspension of sentence and bail.



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3. During trial, on the side of the prosecution, twelve witnesses examined as PW1 to PW12 and marked Exs.P1 to P12. On the side of the defence no witnesses examined and no documents marked. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, had convicted the petitioner as stated above.

4. The contention of the petitioner is that the petitioner as well as his father and mother all falsely implicated in this case as A1 to A3. The petitioner was charged for offences under Sections 450, 376(2)(n) of IPC and Section 6 r/w 5(1) of POCSO Act, 2012 and Section 506(i) of IPC. The trial Court acquitted the petitioner for offences under Sections 450 and 506(i) of IPC and convicted him as stated above. As regards his parents/A2 & A3, they were charged for offences under Sections 506(i) of IPC three counts and they were acquitted by the trial Court.

5. The learned counsel for petitioner submitted that PW2 is the victim in this case, PW1 is the mother of the victim, PW3 is her aunt and PW4 is uncle of the victim. The case projected against the petitioner is that the



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petitioner committed penetrative sexual assault on the minor girl and she became pregnant and delivered a baby. The pregnancy of the victim has been attributed against the petitioner. The contention of the petitioner is that the petitioner had specifically suggested to PW1 to PW4 as well as to the Investigating Officer with regard to one Sakthivel. According to the petitioner, the victim had a relationship with said Sakthivel and not with the petitioner. But the respondent police not conducted any investigation against Sakthivel.

5.1.He further submitted that he cross examined the witnesses in detail about petitioner falsely implicated and the improbability of the evidence against the petitioner considering the attendant circumstances. In the complaint as well as in the evidence of PW2 and other witnesses, gave no details with regard to the place of occurrence, time of occurrence and how the petitioner entered the house of the victim and committed penetrative sexual assault. Further, the admitted case of PW1 to PW4 is that the victim's elder brother, a physically challenged person, was residing along with the victim in the same house. In such circumstances, the petitioner entering into



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the victim's house and committing penetrative sexual assault would not have gone unnoticed. No evidence produced to prove that the petitioner had entered the house of the victim. Further he submitted that the root of the case gets cut and the prosecution case demolished on the DNA report/Ex.P12. The blood cards of the petitioner, victim and the baby subjected to DNA test. The DNA report confirmed the petitioner excluded from the paternity of the male child, which is not seriously disputed by the prosecution.

5.2.The petitioner's case is that the petitioner is not the reason for the victim's pregnancy and he had not committed any penetrative sexual assault. The trial Court rejected his contentions relying upon the decision of this Court in Crl.A(MD).No.346 of 2016, which is based on the positive DNA test report confirming against the accused therein. Likewise, the trial Court relied upon judgment of Hon'ble Apex Court in the case of ***Sunil vs. State of Madhya Pradesh*** reported in ***(2017) 4 SCC 393***, in that case no DNA test conducted, hence, the trial Court relying upon these two decisions, convicting the petitioner is not proper. In this case, there is positive evidence



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in favour of the petitioner by way of Ex.P12/DNA report. Further submitted that the petitioner has arguable points and fair chance of success in this appeal. Hence, he prayed for granting suspension of sentence to the petitioner.

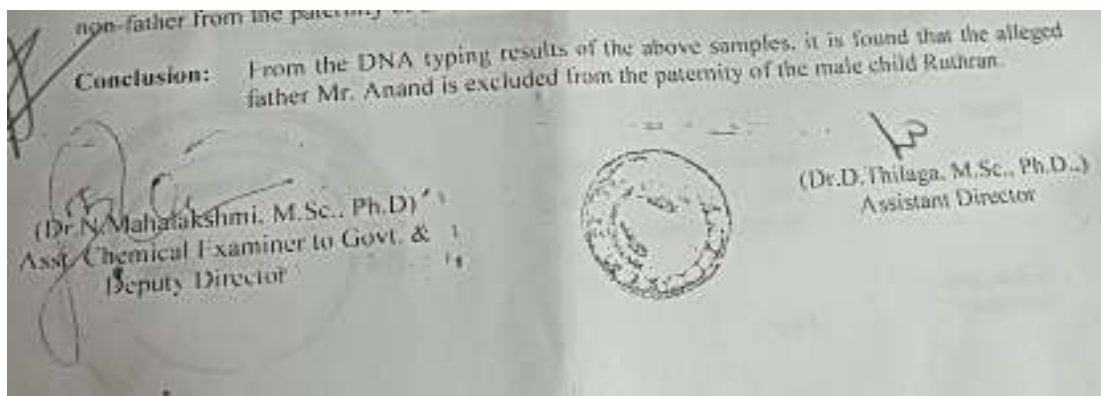
6.The learned Additional Public Prosecutor opposed the contention of the petitioner stating that in this case PW2 is the victim, who was found pregnant on test found pregnancy of eight months. PW3 Aunt of the victim informed PW1, the victim minor. The victim was examined by Doctor, who confirmed pregnancy of the victim girl. The victim girl in the complaint as well as in the statement under Section 164 of Cr.P.C., identified the petitioner is the reason for her pregnancy. Further, all the witnesses clearly stated about the village panchayat, where the petitioner's family offered Rs.50,000/- to terminate the pregnancy, which was refused and thereafter only the complaint lodged. The statement of the witnesses clearly state about the petitioner's overtact in this case. The investigation officer collecting documents and on the Doctor's evidence/PW9, finding that victim is a minor girl, had filed charge sheet before the trial Court. Before the trial Court PW1



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to PW12 examined and Exs.P1 to P12 marked. The trial Court considered the defence taken by the petitioner and negatived the same and convicted the petitioner. Hence, he prayed for dismissal of the petition.

7.Considering the submissions made and on perusal of the material available on record, it is seen that the entire case revolves on the pregnancy of the victim girl. The victim girl found pregnant of 8 months by PW3, who thereafter informed to PW1 and thereafter they had taken PW2/victim to the Doctor, who confirmed the pregnancy and later the victim delivered a male child on 05.06.2019. The scanned reproduction of conclusion arrived in Ex.P12 DNA report is as follows:





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The inference is that *“In view of the above observations Mr.Anand is excluded from being father of the male child Ruthram”*. It is seen that the petitioner Anand excluded from the paternity of male child Ruthran, which cuts the root of the case. 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 reliefs 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.5,000/- (Rupees Five thousand only) with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for POCSO Cases, Thiruvannamalai, Thiruvannamalai District.



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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 Magistrate 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.

12.01.2024

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M. NIRMAL KUMAR., J.

rsi

To

- 1.The Sessions Judge,
Special Court for POCSO Cases,
Thiruvannamalai, Thiruvannamalai District.
- 2.The Inspector of Police,
All Women Police Station,
Thiruvannamalai,
Thiruvannamalai District.
- 3.The Superintendent,
Central Prison, Vellore.
- 4.The Public Prosecutor,
High Court, Madras.

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