



*Crl.M.P.No.18273 of 2023
in Crl.A.No.1303 of 2023*

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Orders Reserved On 14.02.2024	Orders Pronounced On 19.02.2024
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M. NIRMAL KUMAR, J.

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Sessions Judge, Special Court for Trial of Cases under POCSO Act, Tiruvannamalai dated 18.07.2023 made in Special S.C.No.207 of 2019 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused was convicted by the Trial Court in Spl.S.C.No.207 of 2019 for the offences under Sections 341, 366, 376(2)(n) of IPC, Section 6 r/w. 5(1) of POCSO Act, 2012 and Section 506(i) of IPC and sentenced him to undergo one month rigorous imprisonment for the offence under Section 341 IPC, to undergo ten years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one year simple



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imprisonment for the offence under Section 366 IPC, to undergo two years rigorous imprisonment for the offence under Section 506(i) IPC and to undergo ten years years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one year simple imprisonment for the offence under Section 376(2)(n) of IPC and Section 6 r/w. 5(1) of POCSO Act, 2012. All the sentences to run concurrently. Against which, the present appeal is filed along with suspension of sentence.

3.The case of the prosecution is that on 24.04.2019 at about 7.30 p.m., the victim girl went to medical shop to purchase some medicines, at that time, the petitioner forcibly took the victim girl in his bike despite resistance by the victim girl to an isolated place, beaten her, threatened her and forcibly committed penetrative sexual assault several times. Thereafter, the petitioner left her in the middle of the road and fled from the place. The victim girl unable to overcome the tragic incident, she took to heels to commit suicide by jumping into the well. P.W.1/mother of the victim girl informed her elder daughter/P.W.3 and her son-in-law/P.W.4 about the victim girl not returning home. P.W.4 went in search of her, at that time, he



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saw the victim girl running, he stopped her, enquired her, pacified her and took her home. The victim girl disclosed about the incident to P.W.1, P.W.3 and P.W.4. P.W.1 took her to the local Police Station, where she was informed that she has to make a complaint with All Women Police Station. Thereafter, P.W.1 went to the respondent police and lodged a complaint. P.W.9/Sub-Inspector of Police received the complaint/Ex.P1, registered FIR/Ex.P11, visited the scene of occurrence, prepared observation mahazar/Ex.P12 and rough sketch/Ex.P13. On information and identification by the witnesses, the petitioner/accused was arrested and he was produced before P.W.12/Doctor, who examined him and issued Potency Certificate/Ex.P16. Thereafter, P.W.10 took up further investigation and sent the victim girl for medical examination to P.W.8/Doctor, who examined her and issued Accident Register/Ex.P9 and Medical report/Ex.P10. P.W.11/Head Master issued the School Certificate//Ex.P15 and confirmed the date of birth of the victim girl as 31.05.2002. On completion of investigation, charge sheet filed before the Trial Court.

4.Before the Trial Court, on the side of the prosecution P.W.1 to



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P.W.13 were examined, Ex.P1 to Ex.P18 and M.O.1 were marked. On the side of the petitioner/accused, no witnesses examined and no exhibits marked. On conclusion of the trial, the Trial Court convicted the petitioner as stated above.

5.The contention of the learned counsel for the petitioner is that in this case P.W.1 is the mother of the victim girl, P.W.2 is the victim girl, P.W.3 is the sister of the victim girl, P.W.4 is the husband of P.W.3 and all the witnesses are interested witnesses. He would submit that though in chief examination these witnesses state as per the 161 Cr.P.C. Statement but during the cross examination, all the witnesses disowned their earlier statement by stating that the petitioner is a neighbour, they had some dispute with him, hence complaint was lodged against the petitioner and statements were given on the basis of the Villagers giving a story and the petitioner has not committed any offence. The Trial Court failed to look into the fact that the victim girl and her family members were categorical that the petitioner has not committed any offence but on the basis of the 164 statement/Ex.P2 of the victim girl, chief examination of the witnesses, statement of Doctors



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and the medical records convicted the petitioner/accused which is not proper. Hence, he prayed for suspension of sentence.

6.The learned Government Advocate (Crl. Side) filed a counter affidavit and submitted that P.W.1, who is the mother of the victim girl had clearly deposed that on 24.04.2019, her daughter/victim girl went to purchase medicines, at that time, the petitioner forcibly took her to an isolated place and committed penetrative sexual assault. Thereafter, when P.W.4 went in search of the victim girl, he saw the victim girl running to commit suicide, he stopped her and the victim girl narrated about the petitioner kidnapping her and committing penetrative sexual assault. On coming to know about the incident, the entire family shellshocked and they were unable to react immediately, it took sometime to reconcile, thereafter they approached the jurisdictional police, who directed them to approach All Women Police Station. Thereafter, P.W.1 approached the respondent police on 26.04.2019 and lodged a complaint/Ex.P1. P.W.9 received the complaint, registered FIR, visited the scene of occurrence, prepared observation mahazar and rough sketch, examined the witnesses present



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there and recorded their statements. The victim girl was produced before P.W.8/Doctor, who examined her and confirmed that she was subjected to penetrative sexual assault. In the meanwhile, the petitioner/accused was arrested and based on his confession, the bike/M.O.1 which was used in the offence was seized. Thereafter, the petitioner/accused was produced before the Doctor, who confirmed the potency of hte petitioner. The School Certificate from the Headmaster was obtained confirming that the victim girl was a minor. The victim girl was produced before the Magistrate and 164 statement/Ex.P2 recorded wherein she narrates the sequence of events as per the complaint and her earlier statement. He would submit that the petitioner's contention cannot be accepted in this case since the chief examination of the witnesses P.W.1 to P.W.4 were recorded during March and April 2021 but they were cross examined nine months later, during this period the victim and her family members were threatened and silenced not to speak against the petitioner. The prosecution had suggested that since the petitioner is a neighbour, he threatened the witnesses on a daily basis and further the marriage for the victim girl was arranged and hence, not to precipitate the matter and on compulsion, they resiled from their earlier



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statement. He further submitted that the Trial Court had rightly convicted the petitioner relying upon these factors and finding that the 164 statement, medical evidence and attending circumstances confirm that the petitioner has committed penetrative sexual assault. Hence, prayed for dismissal of the petition.

7.Considering the submissions made and on perusal of the materials, it is seen that P.W.1 is the mother, P.W.2 is the victim girl, P.W.3 is the elder sister of P.W.2 and P.W.4 is the husband of P.W.3. The victim girl went to purchase some medicines on 24.04.2019 at about 7.30 p.m. but she had not returned home till 11.30 p.m., hence P.W.1 immediately informed P.W.3 about the victim girl not returning home in time. Thereafter, P.W.4 went in search of her, at that time, he saw the victim girl running to a well to commit suicide, he stopped and enquired her, the victim girl narrated the sufferings she has undergone and the penetrative sexual assault committed by the petitioner. P.W.4 had seen the petitioner/accused taking his bike and fleeing from the place. Thereafter, complaint/EX.P1 was lodged giving details as to how the victim girl was kidnapped and forcible penetrative



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sexual assault committed by the petitioner. The victim girl was examined, her 164 statement is confirmatory to the complaint. The victim girl also stated that soon after the occurrence, her uncle took her along with her parents to the petitioner's house and questioned him, but the petitioner assaulted the victim girl, her uncle and her family members. Thereafter, when the victim girl and her family members were examined during March and April 2021, they deposed as per earlier statement, but nine months later, during cross examination in December 2021, they resiled from their earlier statement. In the meanwhile, as rightly submitted by the prosecution the victim and her family members were threatened won over since the petitioner is their neighbour and he threatened the witnesses on a daily basis which gains credence as could be seen from 164 Statement/Ex.P2. The petitioner/accused had audacity not only in committing the offence but by assaulting the victim girl, her blind father and her family members. Hence, the Trial Court considering the complaint, earlier statement of the victim including her 164 statement, Doctors' evidence and medical records had rightly convicted the petitioner/accused. In view of the same, this Court is not inclined to grant suspension of sentence.



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8. Accordingly, this Miscellaneous Petition stands dismissed.

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Pre-delivery order made in

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