



*Crl.M.P.No.18211 of 2023
in Crl.A.No.1298 of 2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.18211 of 2023
in
Crl.A.No.1298 of 2023

Manikandan

... Petitioner

Vs.

State
The Inspector of Police,
Arcot Town Police Station,
Vellore District.
Crime No.303/2018

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 397(1) of Cr.P.C to suspend the sentence of imprisonment imposed in the judgment dated 04.07.2023 made in S.C.No.100 of 2018 on the file of the Special Judge for Exclusive Trial of Cases under POCSO Act, Vellore, Vellore District and enlarge the petitioner on bail pending disposal of the above appeal.



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For Petitioner : Mr.Silambu Selvan

For Respondent : Mr.C.E.Pratap
Government Advocate [Crl. Side]

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner to suspend the sentence of imprisonment imposed in the judgment dated 04.07.2023 made in S.C.No.100 of 2018 on the file of the Special Judge for Exclusive Trial of Cases under POCSO Act, Vellore, Vellore District and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner was convicted by the Trial Court by judgment dated 04.07.2023 in S.C.No.100 of 2018 for the offences punishable under Section 9(i) and 9(m) of POCSO Act, r/w Section 10 of the POCSO Act,2012 and sentenced to undergo five years of rigorous imprisonment and to pay a fine of Rs.5000/-, in default to undergo three months simple imprisonment. Against which, the present appeal is filed.



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3.The case against the petitioner is that the victim child/PW2, aged about 6 years, is the minor daughter of the PW1/defacto complainant. On 24.05.2018 at about 8 pm, the PW1 along with her husband and children went to marriage of her sister in law and were staying in a room. The victim child informed her mother that she is going to play in the ground floor with her grandmother. After some time, the grandmother informed the defacto complainant that the child is coming upstairs. When the defacto complainant received the victim child at about 3 am on 25.05.2018, the accused/petitioner lifted the victim child and bit her left breast with a sexual intention, the mother, her husband yelled at the petitioner and questioned. He abused the father of the victim child by his caste name and thereafter he fled. Thereafter, the victim child was taken to the Government Hospital, Wallajah and then they went to Government Hospital, Adukkamparai. The respondent police filed a final report for the offences under Sections 294(b), 324, 506(1) of IPC, 8 of POCSO Act and 3(1)(r), 3(1)(s) of SC/ST (Prevention of Atrocities) Amendment Act, 2015. On completion of investigation, final report filed before the Trial Court on 11.08.2018. Before the Trial Court, on the side of the prosecution P.W.1 to P.W.14 examined, Ex.P1 to Ex.P19. On completion of trial, the Trial Court convicted the petitioner as stated above.



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4.The contention of the learned counsel for the petitioner is that the petitioner and the defacto complainant family is residing in the same locality and they know each other. The petitioner had also attended the marriage and was staying there. It is due to previous dispute between the defacto complainant family and the petitioner, the petitioner has been falsely implicated in the case. In this case, according to the prosecution, pm 25.05.2018, the victim girl is said to have molested and sexually assaulted by the petitioner. The victim girl was taken to the Government Hospital, Adukkampari produced before the P.W.7/Assistant Medical Officer, who examined the victim girl at 3.10 am on 25.05.2018 and issued Ex.P10/Accident Register and Ex.P11/opinion. This witness had categorically stated that there was only bruises, that might have occurred while playing and falling and he had also deposed that there is no bite mark on the victim girl's chest. Hence, the case of the prosecution itself is demolished and cut by the root.

5. He further submitted that the case of the prosecution is that the



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petitioner has lifted the victim girl and had bitten her left breast with sexual intention. The P.W.13/grandmother of the victim had deposed that she had told the defacto complainant that she has sent the victim child and the victim child is climbing up the stairs and the defacto complainant was receiving the victim child, in such circumstances, the petitioner cannot not commit such act. He further submitted that while playing and falling, bruises might have occurred to the victim child and he cannot be the cause for such bruises. The Trial Court, primarily, relied on the evidence of P.W.14 who is said to have examined the victim child at 3.20 am on 25.05.2018 stated that there was bite marks, who placed reliance on Ex.P11. This Ex.P11 has been clarified by P.W.7. In view of the same, the case of the prosecution itself is highly doubtful, but the Trial Court has failed to consider the same.

6.The learned Government Advocate [Crl. Side] filed a counter and submitted that the defacto complainant the mother of the victim child/PW2, had lodged a complaint stating that the petitioner had sexually assaulted the minor child. Based on her complaint, case was registered in Crime No.303 of 2018 for the offence under Sections 294(b), 324, 506(1) of IPC, 8 of POCSO Act and 3(1)(r), 3(1)(s) of SC/ST (Prevention of Atrocities)



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Amendment Act, 2015. Thereafter, the Investigating Officer visited the place of occurrence, prepared observation mahazar and rough sketch and recorded the statement of witnesses and 164 statement of PW2 is confirmed as Ex.P4. On completion of investigation, charge sheet filed. During the trial, on the side of the prosecution, P.W.1 to P.W.14 examined, Ex.P1 to Ex.P19. On the side of the defence, one witness examined. On conclusion of trial, the trial Court convicted the petitioner as stated above. Hence, prays for dismissal.

7.Considering the submissions made and on perusal of the materials, it is seen that the specific complaint against the petitioner that the petitioner had lifted the victim child/P.W.2 and had bit her left chest with sexual intention and there was a bite mark. The P.W.7,/Assistant Medical Officer, who examined the victim girl at 3.10 am on the same day, viz., 25.05.2018 and deposed that there were only bruises, that might have occurred while playing and falling and there is no bite mark on the victim girl's chest. Further, the evidence of P.W.14/Medical Officer of the Vellore Government Medical College Hospital that there was a bite mark, placing reliance on Ex.P11, P.W.7 confirms the bruises might have occurred due to fall while



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playing. The petitioner is a known person residing near the victim girl's house and there has been some dispute between them for some other reasons. In this background, the appreciation of evidence by the Trial Court needs to be re-considered. Hence, this Court is inclined to suspend the sentence of Imprisonment till the disposal of the revision petition.

8. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner 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 District Munsif cum Judicial Magistrate, Arcot.

9. Further, the petitioner shall appear before the Trial Court on the first working day once in three months 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.



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WEB COPY 10. Accordingly, this Miscellaneous Petition is ordered.

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To

- 1.The Inspector of Police,
Arcot Town Police Station,
Vellore District.
- 2.The District Munsif cum Judicial Magistrate,
Arcot.
- 3.The Special Judge for Exclusive Trial of Cases under
POCSO Act, 2012
Vellore.
- 4.The Superintendent,
Central Prison,
Vellore.



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M. NIRMAL KUMAR, J.

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