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Crl.M.P.No.18835 of 2023 in Crl.A.No.1036 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.18835 of 2023
in Crl.A.No.1036 of 2023

M.Sirajudeen

... Petitioner

Vs.

State by, Inspector of Police,
Singanallur Police Station,
In Crime No.291/2021,
Coimbatore City.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) the Code of Criminal Procedure, to suspend the sentence imposed in the judgment dated 04.08.2023 in Spl.C.C.No.54 of 2021 on the file of the learned Special Court for Exclusive Trial of Cases under POCSO Act and release the petitioner on bail pending disposal of Criminal Appeal.

For Petitioner	:	Mr.S.Shanmugavelayutham, Senior Counsel for Mr.A.Nowfal
For Respondent	:	Mr.S.Raja Kumar Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, dated 04.08.2023 in Special C.C.No.54 of 2021.



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2.The conviction and sentence imposed on the petitioner are as follows:

- For offence under Section 10 of the Protection of Children from Sexual Offence Act, 2012 the petitioner to undergo five years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo one year Simple Imprisonment.
- For offence under Section 12 of the Protection of Children from Sexual Offence Act, 2012 the petitioner to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo two months Simple Imprisonment.

3.The learned Senior Counsel appearing for the petitioner submitted that in this case, PW2 is the victim girl and PW1, PW3 & PW5 are her father, mother and grandmother respectively. PW2's complaint is that she was aged about 9 years and was residing in the apartment and the petitioner and his mother were residing in the first floor of the same apartment. The petitioner said to have winkled at the victim girl and also pulled her by hand which was the initial complaint. Thereafter, the complaint was manifested including as though six months prior, the petitioner pulled the victim girl and pinched her cheek. One year prior, the petitioner grabbed and pinched her hip and cheek. In this case, PW4, PW6 to PW8 are from the same apartment. The Investigating Officer admitted that it is a four floor apartment, lot of residents



living there. The petitioner's mother is aged and sick. The children used to play in the flat and used to raise noise which was objected by the petitioner.

The victim girl's grandmother (PW5) is residing in the next flat to the petitioner and victim making some noise objected. For this reason, the petitioner implicated in this case. The petitioner is said to have winkled and pulled the victim girl's hands which cannot be construed as act with sexual intent or sexual assault. The trial Court failed to consider the manifestation made in the evidence of the victim girl adding up for the incidents happened six months and one year before. Added to it, there was no complaint at that point of time lodged. It is only an after thought. He further submitted that the petitioner is in prison for the past eight months.

4.The learned Additional Public Prosecutor appearing for the respondent Police filed counter stating that on 22.03.2021, the father of the victim girl (PW1) lodged a complaint (Ex.P1) to the respondent Police that he is doing wholesale and retail business of stationery products. His 2nd daughter/victim girl aged about ten years. The petitioner is lived on the 1st floor of his apartment block. On the evening on 21.03.2021, the victim girl was playing near the petitioner's house. The defacto complainant's mother-in-law's house was near the petitioner's house on the same first floor. That day, he got a call



from his mother-in-law at 09.00 p.m., his wife and himself went straight to inquire about the mother-in-law. Mother- in-law and the victim girl were there. The victim girl told his mother-in-law that the petitioner touched, pinched and winked at the victim girl. His mother-in-law also told him that when the petitioner grabbed his daughter's hand and pulled her, the victim girl took off the sandal and showed it to the petitioner. Immediately, they asked the petitioner and petitioner's mother why the petitioner did this, but they had told him that he can do whatever he want. Based on the above complaint, a case was registered in Crime No.291 of 2021 for offence under Sections 11(1), 11(iv) r/w 12 of the Protection of Children from Sexual Offence Act, 2012 on 22.03.2021 and transferred the case to the All Women Police Station, East, Coimbatore City for investigation. Thereafter, the Inspector of Police, All Women Police Station, East, Coimbatore took up the case for investigation, went to the scene of occurrence, drew the rough sketch (Ex.P8), observation mahazar (Ex.P7) in the presence of witnesses, examined the witnesses and recorded their statements. On 22.03.2021, the Inspector of Police arrested the petitioner, recorded his confession statement, produced him before the learned Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore and remanded him into Judicial Custody. After completion of elaborate and detailed investigation, on 07.05.2021, charge sheet filed before the trial Court.



During trial, on the side of the prosecution, 13 witnesses examined as PW1 to PW13 and 10 documents marked as Exs.P1 to P10. On the side of the defence, one witness examined as DW1, but no defence document marked. On conclusion of the trial, the trial court convicted the petitioner as stated above. Hence, he opposed this petition.

5.Considering the submissions and on perusal of the materials, it is seen that the petitioner is said to have winkled at the victim girl and pulled her by hands. The other two incidents pinching her cheek and hip which is said to have taken place six months and one year before, but no complaint at that time. The petitioner's mother is a sick patient residing with the petitioner. There was some objection for the noise raised by the children therein including the victim girl, which not considered by the trial Court. There are other children residing in the flats, but no complaint from any other children.

6.In view of the above and considering the period of incarceration, this Court is inclined to grant suspension of sentence to the petitioner.

7.Accordingly, the Substantive Sentence of Imprisonment imposed on



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the petitioner is suspended till the disposal of the appeal and he 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 trial Court.

8.Further, 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 criminal 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 Miscellaneous Petition is ordered.

12.03.2024

Index: Yes/No
Internet: Yes/No
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To

1.The Sessions Judge,
Principal Special Court for Exclusive Trial of Cases
under POCSO Act, Coimbatore.

2.The Inspector of Police,
Singanallur Police Station,



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



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M.NIRMAL KUMAR, J.

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