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*Crl.M.P.No.17970 of 2023
in Crl.A.No.315 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2024

CORAM:

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

Crl.M.P.No.17970 of 2023
in Crl.A.No.315 of 2023

Velayutham

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Mettupalayam Police Station,
Puducherry.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the order of conviction order passed by the learned Special Judge (under the POCSO Act, 2012), Principal Sessions Judge, Puducherry in Spl.S.C.No.5 of 2021 dated 23.02.2023 and enlarge the petitioner on bail pending disposal of the appeal.

For Petitioner : Mr.V.Balamurugane
for Mr.P.Balavijayan

For Respondent : Mr.K.S.Mohandass
Public Prosecutor [Puducherry]
Assisted by Ms.N.Danalatchoumy



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Special Judge [Under the POCSO Act, 2012], Principal Sessions Judge, Puducherry by judgment dated 23.02.2023 made in Spl.S.C.No.5 of 2021 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.5 of 2021 for the offences under Sections 10 and 12 of POCSO Act, 2012 and Section 323 IPC and sentenced him to undergo five years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one year rigorous imprisonment for the offence under Section 10 of POCSO Act, to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months rigorous imprisonment for the offence under Section 12 of POCSO Act and to undergo two months simple imprisonment for the offence under Section 323 IPC. All the sentences to



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run concurrently. Against which, the present appeal is filed along with suspension of sentence.

3.The case against the petitioner is that the minor victim girl lodged a complaint to the Child Welfare Committee wherein proceedings issued and thereafter a case in Crime No.116 of 2020 for the offence under Sections 11(i) and 12 of POCSO Act was registered. Later the case was transferred to the respondent police on 29.08.2020. During investigation, P.W.1/mother of the victim, P.W.2/victim girl, P.W.3/grandmother of the victim girl and other witnesses were examined, who confirmed the act of the petitioner. The complaint is that the petitioner who is none other than the father of the victim girl made improper touch on the victim girl for more than one occasion and also made the victim girl to forcibly touch the private parts of the petitioner. The petitioner was arrested and produced for medical examination and the Doctor issued the potency certificate. The victim girl was produced before the Special Court where she had clearly narrated the entire happenings and how she was subjected to sexual assault right from her four years of age which she suffered for 10 years and only at the age of



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14, the victim girl lodged a complaint against the petitioner.

4.Before the Trial Court, on the side of the prosecution P.W.1 to P.W.17 were examined, Ex.P1 to Ex.P11 and M.O.1 were marked. On the side of the petitioner/accused, D.W.1 and D.W.2 were examined and Ex.D1 to Ex.D3 were 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 the petitioner and P.W.1 got married in the year 2006 and out of their wedlock, P.W.2/victim girl was born on 01.11.2007. Thereafter, they were living together, initially the petitioner worked in a Private Bank and later he got employed in Puducherry Public Works Department. P.W.1 was a Tailor, there was no cordial relationship between the petitioner and the defacto complainant, there was constant quarrel and fight, the petitioner unable to bear any further filed a petition seeking divorce on the ground of cruelty in M.O.P.No.204 of 2020 before the Family Court, Pondicherry. He would submit that four incidents have been projected against the petitioner i.e., the



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victim girl was sexually assaulted at the age of four years, eight years, ten years and finally when she was 14 years old, on 15.04.2020 the petitioner is said to have committed sexual assault on her and hence, complaint was lodged on 12.08.2020. He would further submit that M.O.P.No.204 of 2020 seeking divorce was filed on 10.06.2020, notice was issued by the Court and the same was received by P.W.1 on 10.08.2020 and as a counter blast, on 12.08.2020 the present complaint was filed. He further submitted that P.W.1 filed an injunction suit in O.S.No.55 of 2020 during September 2020 before the Family Court, Pondicherry, in the said suit there is no complaint of any sexual assault against the petitioner but there is a reference that the petitioner used to peep into the victim's bedroom, when the victim was sleeping. He would further submit that in this case, all the witnesses P.W.1 to P.W.3 are the wife of the petitioner, victim girl/daughter of the petitioner and mother-in-law of the petitioner. P.W.4 is the colleague tailor working along with P.W.1. The independent witness/P.W.5 not supported the case of the prosecution. P.W.6 is the Photographer who recorded the video of 164 statement and produced M.O.1. and P.W.7 is the Investigating Officer. Other than that, no independent witness examined. He further



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submitted that the case projected by the respondent is that on a complaint to Child Welfare Committee, the entire case originated but none from the Child Welfare Committee was examined as witness in this case. It is to be seen that in this case, there is a matrimonial dispute and with regard to possession and enjoyment of the property in which both the petitioner and P.W.1 were residing. The evidence of P.W.1 to P.W.3 are in a parrot-like version and it is to be seen that the minors are prone to give doctored version, influenced with whose custody they are. The Trial Court failed to consider these aspects and convicted the petitioner merely on the evidence of the victim girl and his estranged family members.

6.Learned Public Prosecutor [Puducherry] opposed the contention of the petitioner stating that other than four incidents which the petitioner had submitted, there is also yet another complaint by P.W.1 and the victim girl that the victim was taken to Chennai for a tour and at that time, the petitioner consumed liquor and the smell of liquor was not able to be taken by the victim girl and she was in great stress. Further, at that time the petitioner and his friends were in an inebriated mood. He would submit that



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the victim girl had clearly narrated as to how she was suffering for 10 years by the improper touch and sexual assault committed by the petitioner from the age of 4 years to 14 years. The victim girl though made a complaint to her mother/P.W.1, she kept quiet but at the same time, she warned the petitioner not to indulge in such activities. Though the petitioner made a promise not to do so but he continued the same. There was also wordy quarrel between P.W.1 and the petitioner in which P.W.1 was assaulted, taken to hospital and thereafter, considering their relationship at the instance of Reddiarpalayam Police, the issue given quietus. He would further submit that in this case the Child Welfare Committee conducted a detailed enquiry and confirming the act of the petitioner, complaint was lodged. Thereafter, the victim girl and her mother/P.W.1 confirmed the act of the petitioner which was recorded through videograph and the same was produced before the Trial Court as M.O.1. He would submit that the victim girl had categorically stated the sexual assault committed by the petitioner and the Trial Court on the evidence of hte witnesses and the victim girl had rightly convicted the petitioner. Hence, he prayed for dismissal of the petition.



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7.Considering the submissions made and on perusal of the materials, it is seen that the petitioner is none other than the father of the victim girl. The petitioner and P.W.1 got married in the year 2006 and the victim girl was born in the year 2007 and they were living together under the same roof till the petitioner was sent out after his arrest. Admittedly, H.M.O.P.No.204 of 2020 was filed by the petitioner on 10.06.2020, notice was served to P.W.1 on 10.08.2020 and the present complaint was given on 12.08.2020. P.W.1 filed a civil suit in O.S.No.55 of 2020 seeking injunction not to disturb her peaceful possession of the property in which the petitioner and P.W.1 were living together along with the victim girl. It is also to be seen that in the civil suit in paragraph 19 the only allegation against the petitioner is that the petitioner was peeping into the bedroom of her daughter/victim girl and when the same was questioned by P.W.1, she was assaulted and threatened, thereafter complaint was lodged to the Child Welfare Committee. Hence, the evidence of P.W.1, P.W.2 and P.W.3 has to be considered with a pinch of salt. It is seen that evidence of P.W.1 to P.W.3 is parrot-like version and there has been some exaggeration. Admittedly the relationship



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between P.W.1 and the petitioner is not cordial and there is matrimonial dispute between them. The victim girl is a minor living with her mother tend to get influenced. Further, in this case the petitioner examined D.W.1 and D.W.2, his relative and sister to confirm about the matrimonial and civil dispute between the petitioner and P.W.1 which has not been considered and with regard to Ex.D1 to Ex.D3, there is no reference by the Trial Court. Hence, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.

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 Special Judge (Under the POCSO Act, 2012), Principal Sessions Judge, Puducherry.

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



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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.

10. Accordingly, this Miscellaneous Petition is ordered.

11.01.2024

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Note: Issue order copy on 12.01.2024



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To

- 1.The Inspector of Police,
Mettupalayam Police Station,
Puducherry.
- 2.The Special Judge
(Under the POCSO Act, 2012),
Principal Sessions Judge,
Puducherry.
- 3.The Superintendent,
Central Prison,
Puducherry.
- 4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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