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*Crl.M.P.No.15691 of 2024
in Crl.A.No.1334 of 2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.15691 of 2024

in

Crl.A.No.1334 of 2023

Kaliyaperumal @ Aravinth

...

Petitioner /Sole Accused

Vs.

State represented by
The Inspector of Police,
All Women Police Station,
Nagapattinam.
(Crime No.21 of 2018)

...

Respondent / Complainant

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr. P.C. / 430(1) of BNSS Act praying to suspend the sentence passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Nagapattinam in Spl.S.C.No.14 of 2019 dated 18.10.2023 and enlarge the petitioner on bail, pending disposal of the appeal.

For Petitioner : Mr.M.Govindaraju

For Respondent : Dr.C.E Pratap,
Govt. Advocate (Crl.side)



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ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Nagapattinam in Spl.S.C.No.14 of 2019 dated 18.10.2023 and enlarge the petitioner on bail, pending disposal of the appeal.

2. The case of the prosecution is that the petitioner was working as a sanitary worker alongwith the paternal aunt and grandparents of the victim girl; that he used to regularly visit the victim girl at the house of the victim's grandmother – PW3 and that on multiple occasions, he used to touch the victim girl inappropriately and that on 18.12.2018, at about 3.30 p.m., when the victim girl went to buy some vegetables, she was intercepted by the petitioner and took her in the motorbike to a grave yard, tied her arms and mouth using piece of cloth and thereafter committed penetrative sexual assault.



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3. The petitioner/accused in Spl.S.C.No.14 of 2019 was convicted by the Trial Court by judgment dated 18.10.2023 for the offence under Sections 366 IPC and Section 10 r/w 9(l) and 6 r/w 5(l) of Protection of Child from Sexual Offences Act, 2012 and sentenced to undergo 1 year Simple Imprisonment and to pay a fine of Rs.1,000/-, in default thereof, to undergo simple imprisonment for a period of 3 months for the offence under Section 366 IPC; to undergo Rigorous Imprisonment for 7 years and to pay a fine of Rs.5,000/-, in default thereof, to undergo simple imprisonment for 6 months for the offence under Section 10 r/w 9(l) of Protection of Child from Sexual Offences Act, 2012 and to undergo 20 years Rigorous Imprisonment and to pay a fine of Rs.20,000/- in default to undergo 1 year Simple Imprisonment for the offences under Section 6 r/w 5(l) of Protection of Child from Sexual Offences Act, 2012. Aggrieved by the same, the petitioner/accused filed Crl.A.No.1334 of 2023 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. The learned counsel for the petitioner would submit that the petitioner was admittedly 17 years at the time of occurrence and that he was



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tried as an adult; that the evidence of the victim and the prosecution case that the petitioner committed penetrative sexual assault cannot be believed; that all the independent witnesses have turned hostile; that there are substantial grounds in the above appeal which requires consideration and prayed for granting suspension of sentence.

5. The learned Government Advocate (crl.side) appearing for the respondent, per contra, would submit that though the petitioner was aged 17 years, considering the nature of the offence which is tried as an adult and that the evidence of PW1, PW2 & PW3 are cogent and convincing, the petitioner has not made out any case for suspension of sentence.

6. Heard the learned counsel for the petitioner as well as learned Government Advocate (crl.side) appearing for the respondent and perused the records.

7. On perusal of the records, it is seen that except PW1 to PW3, all other witnesses have turned hostile. The doctor had observed that there was no external injuries on the victim. Admittedly, the petitioner was aged 17



years at the time of occurrence.

8. Considering the above and the submissions made by the learned counsel for the petitioner that there are substantial grounds in the appeal and the fact that the petitioner is in custody from 18.10.2023, this Court is inclined to grant the relief of suspension of sentence.

9. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioner is suspended and the petitioner is ordered to be released on bail on the following stringent conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.10,000/-, with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Nagapattinam ;
- (ii) The petitioner shall stay at Thanjavur and report before the Inspector of Police, Town Police Station, Thanjavur, everyday at 10.30 a.m. until further orders ;



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(iii)The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity; and

(iv)The petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the trial Court on any 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.

18.11.2024

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Issue order copy by 20.11.2024
Upload the order copy forthwith.



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SUNDER MOHAN, J.

rgt

To

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

2. The Superintendent,
Central Prison,
Cuddalore.

3.The Inspector of Police,
All Women Police Station,
Nagapattinam.

4.The Public Prosecutor,
High Court, Madras.

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