



CRL MP. 16134 of 2024 in
CRL A NO.1427 OF 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20-12-2024**

CORAM

THE HONOURABLE MR JUSTICE SUNDER MOHAN

CRL MP NO. 16134 of 2024

IN CRL.A.NO.1427 OF 2024

John @ Karthikeyan
S/o.Daniel Durairaj,
1/61, Guddur Village, Ambally Post,
Krishnagiri Taluk, And District.

Appellant(s)

Vs

The State Rep By Its,
The Inspector Of Police,
Athiyamankottai Police Station,
Dharamapuri District
Cr.No.536 Of 2016.

Respondent(s)

For Appellant(s): Mr.S.Prabhakaran,
Senior Counsel for
Mr.J.Priscilla Pandian
For Respondent : Dr.C.E.Pratap,
Govt. Advocate (Crl.Side)

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence of imprisonment imposed on the petitioner in Spl.S.C.No.9 of 2023 dated 24.06.2024 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Dharmapuri and enlarge the petitioner on bail, pending disposal of the above Criminal Appeal.



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2. The case of the prosecution is that the victim and the petitioner were known to each other and living in the same village; that on 16.12.2016, the petitioner had abducted the victim and took her to a house and committed penetrative sexual assault on several occasions.

3. The petitioner/Accused in S.C.No.9 of 2023 was convicted by the Trial Court and sentenced to undergo Seven years Rigorous Imprisonment and to pay a fine of Rs.5,000/- for the offence u/s 366 IPC, in default to undergo six months simple imprisonment and for the offence u/s 5(1) r/w 6 of POCSO Act, 2012, sentenced to undergo Ten years Rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for six months. Aggrieved by the same, the petitioner/Accused filed Crl.A.No.1427 of 2024 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. Mr.S.Prabhakaran, learned Senior Counsel for the petitioner would submit that the prosecution had not established the age of the victim in the manner known to law; that they initially filed certificate issued by the College Principal and since it was not accepted, the court called for the



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school documents to establish the birth; that the prosecution had produced the transfer certificate and the admission register without producing the matriculation certificate; that the doctor had opined that the victim girl was aged 18 years at the time of occurrence; that the evidence would suggest that the victim had voluntarily gone with the petitioner ; that the investigating officer had admitted in the cross examination that in the statement made to the Magistrate under 164 Cr.PC., the victim had not stated about the alleged penetrative sexual assault said to have been committed by the petitioner; that there are substantial grounds in the above appeal and that the petitioner is in custody from 24.06.2024.

5. Heard the learned counsel for the petitioner as well as learned Government Advocate (Crl.side) and perused the counter filed by the State.

6. The learned Government Advocate (Crl.side) on the other hand would submit that the school certificate is admissible as per the decision of the Hon'ble Supreme Court in ***Rishipal Singh Solanki v. State of Uttar Pradesh in 2022 (8) SCC 602***, that the age has been established by the prosecution; that the consent is immaterial in a prosecution under POCSO



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Act since the victim was a minor at the time of occurrence and therefore, opposed the prayer for suspension of sentence.

7. The evidence adduced by the prosecution suggest that the victim had initially gone with the petitioner and thereafter she was brought to her house and subsequently, she had gone with the petitioner once again. The investigating officer admits that in the statement made under 164 Cr.P.C., the victim had not stated about the alleged penetrative sexual assault. The doctor had also stated that there were no external injuries on the victim thereby ruling out forcible sexual intercourse. The prosecution has not chosen to mark the matriculation certificate of the victim for the reason best known, though the victim was studying in college at the time of occurrence. They had initially produced the certificate issued by the College Principal which was not accepted by the trial court and therefore, produced only the transfer certificate. The doctor had opined that the victim girl was aged 18 years at the time of occurrence. In these circumstances, it has to be examined whether the conviction can be based on the sole testimony of the victim.



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8. Considering the above facts and the fact that the petitioner has raised substantial grounds in the above appeal which requires consideration; that the petitioner is in custody from 24.06.2024 and that the appeal is not likely to be taken up in the near future, this Court is inclined to grant the relief of suspension of sentence to the petitioner.

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 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, Dharmapuri ;
- (ii) 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
- (iii) 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



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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.

20.12.2024

rgr

Issue order copy by .12.2024
Upload the order copy forthwith.

To

- 1.The Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Dharmapuri.
- 2.TheThe Inspector Of Police, Athiyamankottai Police Station, Dharamapuri District.
- 3.The Superintendent Central Prison, Salem.
- 4.The Public Prosecutor, High Court, Madras.



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SUNDER MOHAN, J.

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