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Crl.M.P.No.16612 of 2024 in Crl.A.No.1476 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.16612 of 2024  
in Crl.A.No.1476 of 2024

Kumar

... Petitioner/Sole Accused

Vs.

The State Rep. by  
The Inspector of Police,  
Sathyamangalam All Women Police Station,  
Erode District.  
(Cr.No.1/2023)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 430 (1) of BNSS, to suspend the sentence imposed in Spl.S.C.No.21 of 2023 dated 23.08.2023 on the file of the learned Sessions Judge, Magalir Neethi Mandram (FTMC), Erode and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.S.Mohamed Saifulla

For Respondent : Dr.C.E.Pratap  
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner/accused by judgment and



order dated 23.08.2023 passed in Spl.S.C.No.21 of 2023 on the file of the learned Sessions Judge, Magalir Neethi Mandram (FTMC), Erode, and to enlarge the petitioner on bail pending disposal of the appeal.

2. The case of the prosecution is that the petitioner is the neighbour of the victim and on 06.01.2023 at about 3.30pm, when the parents of the victim had gone for work, the petitioner called the victim child to his house, removed her dress, touched and pinched her private part.

3. The petitioner was convicted by the trial Court for the offence under Section 9(m) punishable under Section 10 of the POCSO Act, 2012 and sentenced him to undergo rigorous imprisonment for five years and to pay a fine of Rs.3,000/- in default to undergo simple imprisonment for two months.

4. Heard Mr.M.Mohamed Saifulla, learned counsel for the petitioner and Dr.C.E.Pratap, learned Government Advocate (Crl.Side) appearing for the respondent/State.

5. (i) The learned counsel appearing for the petitioner would



submit that the conviction is based on the sole testimony of the victim, who was aged about six years at the time of the occurrence; that there is no evidence to corroborate the evidence of the victim; that even according to the prosecution, the victim had informed the occurrence to PW4, the grandmother of the victim and PW4 turned hostile; that there are several infirmities in the prosecution; that the petitioner is in custody from 23.08.2023; and that therefore, the sentence imposed on the petitioner may be suspended.

6. Heard the learned Government Advocate (Crl. Side) appearing for the respondent/State and perused the counter affidavit filed by the respondent.

7. Considering the submissions made by the learned counsel for the petitioner that there are several arguable points in the appeal, which require consideration; that the appeal is not likely to be taken up in the near future; and the fact that the petitioner is in custody since 23.08.2023, this Court is inclined to grant the relief of suspension of sentence to the petitioner.



8. Accordingly, this criminal miscellaneous petition stands **allowed**. 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, Magalir Neethi Mandram (FTMC), Erode;
- (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 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.

**13.12.2024**

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**Issue order copy 16.12.2024**

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SUNDER MOHAN, J.

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- To
1. The Sessions Judge,  
Magalir Neethi Mandram (FTMC), Erode.
  2. The Inspector of Police,  
Sathyamangalam All Women Police Station,  
Erode District.
  3. The Superintendent of Prisons,  
Central Prison, Coimbatore.
  4. The Public Prosecutor,  
Madras High Court.

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