



CRL MP. 16471 of 2024 in
CRL A NO.891 OF 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-12-2024

CORAM

THE HONOURABLE MR JUSTICE SUNDER MOHAN

CRL MP NO. 16471 of 2024 IN

CRL.A.NO.891 OF 2024

Madhubalan
S/o.Kalaivanan, Vadapathi Street, Neithavasal,
Sirkazhi Taluk, Mayiladuthurai District.

Appellant(s)

Vs

The State Rep By
Inspector Of Police, Poombukar Police Station,
Mayiladuthurai. Crime No.100/2017

Respondent(s)

For Appellant(s): Mr.R.Srinivas, Senior Counsel
for Ms.Mythili Srinivas

For Respondent : DR.C.E.PRATAP,
GOVT. ADVOCATE (CRL.SIDE)

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the substantial sentence of imprisonment imposed on the petitioner by the order of the learned Special Court (POCSO) Act, Nagapattinam in Special S.C.No.1/2018 dated 13.05.2024 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 aged about 16 years was studying in XI standard in a school; that she used to travel in a mini bus to go to her school in which the petitioner was working as a conductor; that the petitioner got acquainted with the victim and on the false promise of marriage, had committed penetrative sexual assault on several occasions before 25.12.2016; that the victim had not disclosed this fact to anybody and on 03.10.2017, when the victim was found to be seven months pregnant, a complaint was lodged for the offence under Section 6 r/w 5(i) of POCSO Act.

3. The petitioner/Accused in Spl.S.C.No.1 of 2018 was convicted by the Trial Court and sentenced to undergo Rigorous Imprisonment for 7 years alongwith fine of Rs.5,000/- for the offence under Section 506(ii) of IPC and in default, to undergo simple imprisonment for six months and sentenced to undergo Rigorous Imprisonment for 20 years alongwith fine of Rs.20,000/- for the offence under Section 6 r/w 5(i) of POCSO Act, in default, to undergo rigorous imprisonment for one year. Aggrieved by the same, the petitioner/accused filed Crl.A.No.891 of 2024 along with the instant miscellaneous petition seeking suspension of sentence and bail.



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4. The learned counsel for the petitioner would submit that the allegations are false; that the victim had not complained about the alleged occurrence till she was found pregnant; that the victim had delivered a child and a DNA analysis was done and the report Exs.P14 & 15 ruled out the paternity of the petitioner; that the conviction is based on the sole testimony of the victim and has to be tested by this court in the above appeal; that the petitioner is in custody from 13.05.2024 and prayed for suspension of sentence.

5. Heard the learned Govt. Advocate (crl.side) and perused the counter affidavit.

6. The learned Government Advocate(crl.side), per contra, submitted that the victim's statement has been constant throughout; that even assuming there is a consent, it is not valid since the victim was a minor at the time of occurrence; therefore, the judgment of the trial court is in accordance with law and prayed for dismissal of the petition.



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7. It is seen from the records that the DNA report ruled out the paternity of the petitioner. The victim had not complained about the occurrence to anybody till she was found pregnant by her mother, PW1. The conviction is based on the sole testimony of the victim. In such circumstances, this court has to examine whether the conviction can be based on the sole testimony of the victim.

8. Considering the fact that the petitioner is in custody from 13.05.2024 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 Special Court (POCSO) Act, Nagapattinam;
- (ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court



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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.

17.12.2024

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Issue order copy by 17.12.2024
Upload the order copy forthwith.



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SUNDER MOHAN, J.
rgr

To

1. The Special Court (POCSO) Act,
Nagapattinam.
2. The Inspector Of Police,
Poombukar Police Station,
Mayiladuthurai.
3. The Superintendent
Central Prison,
Cuddalore.
4. The Public Prosecutor,
High Court, Madras.

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