



CRL MP. 16733 of 2024 in
CRL A NO.1304 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-12-2024

CORAM

THE HONOURABLE MR JUSTICE SUNDER MOHAN

**CRL MP. 16733 of 2024
IN CRL.A.NO.1304 OF 2023**

VELU
S/O GOVINDASAMY, PERNAMALLUR OLD
COLONY, VANTHAVASI CIRCLE,
THIRUVANNAMALAI DISTRICT (NOW CONFINED
AT CENTRAL JAIL, VELLORE)

APPELLANT

Vs

INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
CHEYYAR, THIRUVANNAMALAI.

RESPONDENT

For Appellant : MR.A.ILAYAPERUMAL
For Respondent : MR.C.E.PRATAP,
GOVT.ADVOCATE(CRL.SIDE)

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the execution of sentence passed on 26.06.2023 against the petitioner/accused in Spl.S.C.No.23 of 2019 on the file of the Special Sessions Judge, (POCSO Cases), Tiruvannamalai and enlarge the petitioner on bail, pending disposal of the above appeal.



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2. The case of the prosecution is that, the petitioner and the victims were neighbours; that the victims were sisters; that one of victim is deaf and dumb; that both are aged below 12 years; that on 10.09.2015 at about 7.00 p.m., with an intention to commit penetrative sexual assault, took the victim to a secured place near petrol bunk and removed the dresses of the victim and committed penetrative sexual assault by kissing the private parts of the victim inserting his tongue.

3. The petitioner/Accused in Spl.S.C.No.23 of 2019 was convicted by the Trial Court and sentenced to undergo Seven years Rigorous Imprisonment and imposed a fine of Rs.1,000/- for the offence under Section 363 of IPC and in default, to undergo simple imprisonment for one year and for the offence under Section 6 of the POCSO Act, sentenced to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.2,000/-, in default, to undergo simple imprisonment for one year. Aggrieved by the same, the petitioner/A.1 filed Crl.A.No.1304 of 2023 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 one of the victim was examined; that there was a dispute between the petitioner and the victim's mother and hence a false case has been foisted; that the doctor's evidence would show that there are no injuries or any symptoms of penetrative sexual assault on the victim; that the complaint was given only on 12.09.2015 which is an after thought; that there are arguable points in the appeal which requires consideration; that the petitioner is in custody from 26.06.2023 and was in custody during investigation for a period of one month and prayed for suspension of sentence.

5. The learned Govt. Advocate (crl.side), on instructions, would submit that one of the victims is deaf and dumb and that she was not examined. However, the evidence of PW4, the other victim girl who was aged 5 years at the time of occurrence is sufficient to convict the petitioner and prayed for dismissal of the petition.

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



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7. The earlier bail petitions filed by the petitioner were dismissed as withdrawn. Admittedly, out of the two victims, only one victim who was aged 5 years was examined by the prosecution. There are no eye-witness to the occurrence. It is only on the basis of PW4's version, the complaint was lodged two days after the alleged occurrence. There are contradictions in the evidence of PW4 and therefore it has to be examined in the appeal as to whether the conviction can be recorded on the sole testimony of PW4.

8. Considering the above, the submissions of the learned counsel for the petitioner that there are arguable points in the appeal which requires consideration; that the appeal is not likely to be taken up in the near future; and that the petitioner is in custody from 26.06.2023, 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:



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- (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 Sessions Judge, (POCSO Cases), Tiruvannamalai ;
- (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.

10.12.2024

rgf

Issue order copy by 11.12.2024
Upload the order copy forthwith.



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SUNDER MOHAN, J.

rgt

To

1. The SPECIAL SESSIONS JUDGE,
(POCSO Cases), TIRUVANNAMALAI

2.THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
CHEYYAR, THIRUVANNAMALAI.

3.THE SUPERINTENDENT
CENTRAL PRISON,
VELLORE.

4.THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

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