



*Crl.M.P.No.19253 of 2023
in Crl.A.No.1487 of 2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.19253 of 2023

in

Crl.A.No.1487 of 2023

1.Saravana Rukesh Babu

2.Dhanalakshmi

...

Petitioners /A.1 & A.2

Vs.

The State represented by
The Inspector of Police,
All Women Police Station
Ooty Town
(Crime No.07 of 2018)

...

Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C, praying to suspend the sentence imposed on the appellants in Spl.C.C.No.4/2019 passed by the Hon'ble Sessions Judge of Magalir Neethi Mandram (Fast Track Mahila Court), Udthagamandalam in Crime No.07/2018 on the file of Inspector of Police, All Women Police Station, Ooty Town Police Station and enlarge the accused on bail pending disposal of the Criminal Appeal.



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For Petitioner : Mr.M.B.Kiruthika
for Mr.K.Balaji

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

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner to suspend the sentence imposed on the appellants in Spl.C.C.No.4/2019 passed by the Hon'ble Sessions Judge of Magalir Neethi Mandram (Fast Track Mahila Court), Udhagamandalam in Crime No.07/2018 on the file of Inspector of Police, All Women Police Station, Ooty Town Police Station and enlarge the accused on bail, pending disposal of the Criminal Appeal.

2. The case of the prosecution is that the victim aged about 6 ½ days was residing with her mother, the second petitioner herein, where the first petitioner (brother of the second petitioner) also lived, that ever since the child was 4 years old, the first petitioner had committed sexual harassment by touching the child inappropriately and also committed penetrative sexual assault by inserting his finger in the genital area of the victim and that when she complained the said acts of the first petitioner to the second petitioner, the second petitioner ignored the same and thereby abetted the commission of



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alleged offences by the first petitioner.

3. The petitioners/A.1 & A.2 in Spl.C.C.No.4 of 2019 were convicted by the Trial Court by judgment dated 29.09.2023 under Section 235 (ii) Cr.P.C. and sentenced the 1st accused under Section 5(1) r/w 6, 5(m) r/w 6 and 5(n) r/w 6 of the POCSO Act to undergo rigorous imprisonment for 20 years and to pay a fine of Rs.5,000/- for each offence and in default, to undergo simple imprisonment for one year and sentenced the for 2nd accused under Section 5(1) r/w 6 r/w 16 r/w 17, 5(m) r/w 6 r/w 16 r/w 17 and 5(n) r/w 6 r/w 16 r/w 17 of the POCSO Act to undergo rigorous imprisonment for 20 years and to pay a fine of Rs.5,000/- for each offence and in default to undergo simple imprisonment for one year. Aggrieved by the same, the petitioners/A.1&A.2 filed Crl.A.No.1487 of 2023 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. The learned counsel for the petitioners would submit that the evidence of the victim is contrary to her Section 164 statement Cr.P.C. which has been elicited in the cross examination; that the deposition of the victim would show that her version is inherently improbably; that the only allegation made by the



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victim in her 164 statement was that the 1st petitioner had used her tooth brush and tooth paste to brush near her private part and that the deposition in court is an improved version and that the case has been foisted at the instance of the father of the minor girl/victim with whom the second petitioner had a dispute with regard to custody of the victim.

5. The learned Government Advocate (crl.side) appearing for the respondent, per contra, would submit that the evidence of the victim is cogent and convincing; that the complaint was lodged only at the instance of the victim who had complained about the incidents to her teacher who in turn informed the Child Welfare Board and that the Trial Court had rightly convicted the petitioners and that the petitioners have not made out any case for suspension of sentence and prayed that the petition is liable to be dismissed.

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



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7. This Court finds force in the submission made by the learned counsel for the petitioners that the initial version given by the victim in her Section 164 statement Cr.P.C is that the first petitioner used tooth brush and tooth paste near the genital area and her version in her deposition before court is an improved version. Admittedly, there is a dispute with regard to the custody of child between the second petitioner and the father of the minor child/victim. It is also seen that the medical evidence also does not corroborate the version of the victim.

8. Considering the above, the period of incarceration, that there are arguable points in the appeal and the fact 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 petitioners.

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



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- (i) The petitioners shall execute a bond for a sum of Rs.10,000/- each, with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge of Magalir Neethi Mandram (Fast Track Mahila Court), Udthagamandalam ;
- (ii) The petitioners 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 petitioners 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.

13.11.2024

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Issue order copy by 14.11.2024
Upload the order copy forthwith.



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SUNDER MOHAN, J.

rgt

To

1.The Sessions Judge of Magalir Neethi Mandram
(Fast Track Mahila Court), Udhagamandalam

2. The Superintendent,
Central Prison,
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

4.The Inspector of Police,
All Women Police Station
Ooty Town.

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