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Crl.M.P.No.3206 of 2024
in Crl.A.No.207 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2024

CORAM:

**THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

Crl.M.P.No.3206 of 2024
in Crl.A.No.207 of 2024

P.Kameshvara Rao

... Petitioner

Vs.

The State rep. by
The Inspector of Police,
W-13, All Women Police Station,
Washermenpet, Chennai – 600 021.
(Crime No.18 of 2020)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of the Criminal Procedure Code, seeking to suspend the sentence of imprisonment passed against the petitioner in Special Sessions Case No.12 of 2021 dated 26.09.2022 by the learned Court of Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai and enlarge the petitioner on bail, pending disposal of the above criminal appeal.

For Petitioner : Mr.G.Saravanan
and Mr.M.Kumar
For Respondent : Mr.A.Gokulakrishnan,



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Additional Public Prosecutor

ORDER

M.S.RAMESH, J.
AND
SUNDER MOHAN, J.

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai on 26.09.2022 in Spl.S.C.No.12 of 2021 and enlarge him on bail, pending disposal of the Criminal Appeal.

2. The learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai in Spl.S.C.No.12 of 2021, has convicted the petitioner and sentenced him as follows:-

<i>Accused</i>	<i>Offence</i>	<i>Sentence imposed</i>
A12	Section 6 r/w. 5(c) of POCSO Act @ 4 r/w. 3 of POCSO Act	20 years imprisonment along with a fine of Rs.50,000/- in default to undergo 3 months simple imprisonment.



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3. Challenging the above conviction and sentence, the petitioner, has filed the above Criminal Appeal and he seeks suspension of sentence and bail in the present miscellaneous petition.

4. Heard Mr.G.Saravanan, learned counsel appearing for the petitioner and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, appearing for the respondent/Police.

5. It is the case of the prosecution that A1 to A5 are close relatives and that A2 is the cousin sister of the victim child. The prosecution alleges that all the five accused, with an intention to earn money from prostitution, took the victim child from her parents on 29.08.2020 with a false promise to provide education to her and involved her in prostitution and subjected her to have sexual intercourse with A10 to A22 from 29.08.2020 to 09.11.2020 and on various dates. The petitioner herein is arrayed as A12.

6. The learned counsel for the petitioner submitted that the



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petitioner's name was not found in the FIR or in Section 164 Cr.P.C.

statement given by the victim; that except for the identification of the petitioner by the victim before the trial Court, there is no other evidence to connect the petitioner with the alleged offence; that the identification is suspected; that the petitioner is in custody from 23.11.2020 right from the day of arrest; and since the appeal is not likely to be taken up in the near future, he prayed for suspension of sentence.

7. Learned Additional Public Prosecutor, per contra, submitted that there is evidence to show that the petitioner was identified by the victim and the trial Court was right in convicting the petitioner and prayed for dismissal of the petition for suspension of sentence.

8. By an order dated 27.03.2024 in CrI.M.P.No.4121 of 2024 in CrI.A.No.90 of 2024, we have considered the case of A16 and granted suspension of sentence to him by making the following observations:-

..... *“6.We have carefully considered the rival submissions and perused the records.*

7. (i) It is seen from the evidence of PW2, the victim that



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the petitioner was shown to the victim and was asked whether she knew him and the victim had stated that he had come to the house of one Sandhiya [A3], where she was subjected to sexual intercourse. However, we find in the deposition of PW2 that there is an endorsement by the trial Court to the effect that PW2 had privately informed the learned Judge that she was unable to identify some of the accused and that some of the accused were shown to her in the phone. Apart from the identification of the victim, there is no other evidence.

(ii) Further the petitioner's name does not find place in the FIR or in Section 164 Cr.P.C., statement of the victim and the issue whether the identification of the petitioner by the victim in the dock can be accepted, has to be examined.”

9. The aforesaid observations will squarely apply to case of the petitioner/A12 herein as well, as he stands on the same footing. Therefore, in view of the above and considering the fact that the petitioner is in custody for nearly 3 years and 6 months and the appeal is not likely to be taken up in the near future, we are inclined to grant the relief of suspension of sentence to the petitioner herein/A12.



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10. Accordingly, this Criminal Miscellaneous Petition stands **allowed** and the sentence imposed on the petitioner/A12 is suspended on the following conditions:-

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, 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, Chennai;
- (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;
- (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.



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(iv) This order of suspension shall be subject to payment of fine imposed on the petitioner by the Trial Court in the judgment.

(M.S.R, J.)

(S.M, J.)

21.06.2024

Index: Yes/No

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Note: Issue Order Copy on 25.06.2024

To

1. The Sessions Judge,
Special Court for Exclusive Trial
of Cases under POCSO Act,
Chennai.

2. The The Inspector of Police,
W-13, All Women Police Station,
Washermenpet, Chennai – 600 021.

3. The Superintendent,
Central Prison,
Puzhal, Chennai.

4. The Public Prosecutor,
High Court,
Madras.



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