



*Crl.M.P.No.19875 of 2023
in Crl.A.No.1196 of 2023*

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Orders Reserved On 15.02.2024	Orders Pronounced On 21.02.2024
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M. NIRMAL KUMAR, J.

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Sessions Judge, Magalir Neethi Mandram [Fast Track Court], Erode by judgment dated 13.10.2022 in Spl.S.C.No.53 of 2019 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused was convicted by the Trial Court in Spl.S.C.No.53 of 2019 for the offences under Sections 5(l), 5(n) punishable under Section 6 of Protection of Children from Sexual Offences Act, 2012 [POCSO Act] and sentenced to undergo twenty years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three months simple imprisonment. Against which, the present appeal is filed along with suspension of sentence.



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3.The case of the prosecution is that the victim girl/P.W.2, who is 16 years old, studying XI Standard. On 17.10.2018, the grandmother of P.W.2 arranged a feast in her house, all family members gathered for celebration and they were making preparation for the feast. At that time, the victim girl came to her house for taking bath and get ready. The petitioner entered into the house, as the victim was coming out after bath having towel around her, he latched the door, pushed the victim to the bed, removed her clothes and committed penetrative sexual assault twice despite the victim girl showing resistance. Further, the petitioner threatened the victim girl, if she discloses the above incident, the petitioner being a Driver would run over the vehicle on the victim's parents. Fearing for the same, the victim girl not disclosed the fact to anyone. Two months thereafter, the victim girl started vomiting, when P.W.1/mother of the victim girl enquired the same, initially the victim girl was reluctant but when she was taken to Doctor, it was confirmed that the victim girl was found pregnant, the victim girl informed that the petitioner is the reason for her pregnancy. P.W.1/defacto complainant and her family members enquired the petitioner, who is the son-in-law of the



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defacto complainant's brother about the incident but he refused the same.

Further, the petitioner threatened defacto complainant's family and accused the victim girl might have been in friendly terms with some other person and he is not the reason for her pregnancy. But when the petitioner was called for DNA test, he refused. Thereafter, complaint/Ex.P1 was lodged before the respondent police. On receipt of complaint, P.W.15/Head Constable registered FIR//Ex.P19. P.W.17/Inspector of Police took up investigation, visited the scene of occurrence, prepared observation mahazar/Ex.P4 and rough sketch/Ex.P21, enquired the witnesses present in the scene of occurrence. Thereafter, the victim girl was produced for medical examination. P.W.4, P.W.11 and P.W.12 are the Doctors who examined the victim girl and confirmed that the victim girl was subjected to penetrative sexual assault. The victim girl was produced before the Judicial Magistrate and 164 statement/Ex.P2 recorded. Thereafter, the petitioner/accused was arrested and gave a confession statement. On completion of investigation, charge sheet filed before the Trial Court.

4.Before the Trial Court, on the side of the prosecution P.W.1 to



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P.W.17 examined and Ex.P1 to Ex.P27 marked. On the side of the petitioner/accused, no witnesses examined and no exhibits marked. On conclusion of the trial, the Trial Court convicted the petitioner as stated above.

5.The contention of the learned counsel for the petitioner is that there is a delay in lodging the complaint. The alleged occurrence is said to have taken place on 17.10.2018 but the complaint was given only on 04.02.2019 and no reason was given for the delay. He would submit that the alleged occurrence is said to have taken place inside the house and no witnesses examined to prove the attendant circumstances that the petitioner entered the house and committed penetrative sexual assault. He would further submit that P.W.1 is the defacto complainant/mother of the victim girl was informed about the incident, P.W.1 claim that the victim was pregnant, which was confirmed by P.W.4, but no test for pregnancy conducted, no foetus collected to confirm by DNA test that the petitioner is the reason for pregnancy. The Doctors who examined the victim girl clearly stated that the victim was not pregnant. He further submitted that the statement of P.W.2



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is that she along with seven other relatives, children went into the house to take bath and the children were sent out by the petitioner, who took advantage of the victim girl being alone, committed penetrative sexual assault and in this case, no children examined. He would further submit that there is a family dispute and for this reason, the petitioner was falsely implicated in this case. The other witnesses are all victim girl's father, mother, brothers and sisters and no independent witnesses examined. The petitioner who is a married man having two children, has been falsely implicated in this case. Hence, he prayed for suspension of sentence.

6.The learned Government Advocate (Crl. Side) filed a counter affidavit and submitted that the victim girl is 16 years old studying XI Standard. On 17.10.2018, the grandmother of the victim girl arranged for a feast in her house, for which, all the family members gathered together. At that time, the victim girl came to her house to take bath, taking advantage of the loneliness of the victim girl the petitioner committed continuous penetrative sexual assault on the victim girl despite her resistance. Thereafter, the petitioner threatened her and criminally intimidated her, not



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to disclose the assault to anyone. Fearing for life, the victim girl not disclosed to anyone. Two months thereafter, the victim girl suffered the symptoms of pregnancy and on enquiry, she narrated the occurrence. Thereafter, P.W.1/mother of the victim girl lodged a complaint/Ex.P1. On receipt of complaint, P.W.15 registered FIR/Ex.P19. P.W.17 took up the investigation, visited the scene of occurrence, prepared observation mahazar/Ex.P4 and rough sketch/Ex.P21 in the presence of witnesses. Thereafter, the victim girl was produced before the Doctor for medical examination. P.W.17 sent a requisition/Ex.P22 to the learned Chief Judicial Magistrate, Erode for recording 164 Cr.P.C.statement of the victim girl and thereafter, 164 Statement/Ex.P2 recorded. Thereafter, P.W.16 took up further investigation. The School Certificate/Ex.P5 from the Headmaster/P.W.8 was obtained confirming that the victim girl was a minor. In the meanwhile, the petitioner/accused was arrested, confession statement recorded and he was produced before P.W.14/Doctor for medical examination. He would submit that the petitioner claimed that there is no corroboration between the victim statement and the tutored witnesses, but it is quite natural that in the case of this nature, there will not be any eye



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witnesses. He would further submit that the victim girl got pregnant at a very young age, further the foetus was aborted due to her young age and hence, the foetus cannot be collected for DNA test. He further submitted that the Trial Court had rightly convicted the petitioner relying upon these factors and finding that the 164 statement, medical evidence and attending circumstances confirm that the petitioner has committed penetrative sexual assault. Hence, prayed for dismissal of the petition.

7.Considering the submissions made and on perusal of the materials, it is not in dispute that P.W.2/victim is a minor school going girl, her age proved by producing the School Certificate from the Headmaster, P.W.1/mother of the victim girl lodged a complaint stating that the victim was found vomiting and felt dizziness and when enquired, the victim disclosed about the incident. The petitioner is not a stranger, he is a close relative who also attended the family feast on 17.10.2018, all family members gathered in the house of victim's grandmother. The victim went to her house to take bath and she was alone, at that time, sexual assault took place. The petitioner had no reason to be present in the victim's house on



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that day. Further, the victim was found vomiting and when she was examined, it was confirmed that the victim girl was pregnant. In 164 Statement/Ex.P2, the victim girl clearly narrated the sequence of events. The victim girl was forced and threatened, for that reason, she had not disclosed the fact immediately and that was the reason for the delay in lodging the complaint. When the victim girl was travelling in a bus along with her mother to Dharmapuri, she had profused bleeding from her private part, due to travel strain, which is the reason for miscarriage. P.W.4/Doctor confirms the treatment taken and medical examination. P.W.11 and P.W.12 are the Government Doctors who examined the victim girl, after complaint was lodged, Doctors confirm about the victim disclosing the fact of petitioner committing penetrative sexual assault which corroborates with the medical examination and records. P.W.1/mother, P.W.3/father and P.W.5/sister of the victim, and P.W.6/close relative, all stated about the feast, sexual assault by the petitioner and thereafter, they questioned the petitioner about his sexual assault on the victim girl. Though the petitioner attempted to show a brave face, making accusation against the victim girl, later when he was called for DNA test, he refused. The petitioner's defence about family



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dispute being the motive for his false implication is not substantiated. The petitioner being a married man having two children had no reason to indulge in such activities. The Trial Court considering all these aspects by a detailed judgment had rightly convicted the petitioner. Hence, this Court finds no reason to interfere with the finding of the Trial Court at this stage.

8. Accordingly, this Miscellaneous Petition stands dismissed.

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Pre-delivery order made in

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