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*Crl.M.P.No.19797 of 2023
in Crl.A.No.1620 of 2023*

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M. NIRMAL KUMAR, J.

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence of imprisonment imposed on him in Spl.C.C.No.24 of 2021 passed by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Udthagamandalam, the Nilgiris by a judgment dated 29.11.2023 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused in Spl.C.C.No.24 of 2021 was convicted by the trial Court by judgment dated 29.11.2023 for offence under Section 342 IPC and 7 r/w 8 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.500/- for offence under Section 342 of IPC and three years rigorous imprisonment and to pay a fine of Rs.5,000/- for offence under Section 7 r/w 8 of POCSO Act, against which, the petitioner filed an appeal in Crl.A.No.1620 of 2023 before this Court along with suspension of sentence petition.



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3. During trial, on the side of the prosecution, PW1 to PW17 examined and marked Exs.P1 to P13. On the side of the defence, no witnesses examined and no exhibits marked. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, had convicted the petitioner as stated above.

4. The contention of the petitioner is that the petitioner had some dispute with the Tamil Nadu Electricity Board (TNEB) official and the petitioner's wife earlier lodged a complaint against the TNEB official, which has been admitted by PW7/Assistant Engineer, TNEB. He further submitted that the case projected by the de-facto complainant/PW1/mother of the victim/PW2 and her brother/PW4 is that normally children used to play in front of the petitioner's house and at times visited the petitioner's house to watch T.V. On 05.03.2021, PW1's children were playing near their house. Thereafter they disappeared, PW1 made enquiry and searched for them. At that time, PW1 found her daughter/PW2 sleeping besides the petitioner, PW4 was alone watching T.V. and thereafter she lodged a complaint.



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5.Learned counsel for petitioner submitted that the complaint itself is that PW2 was sleeping besides the petitioner and nothing more. In such circumstances, it cannot be stated that petitioner with sexual intent made any sexual assault. PW3/father of the victim though aware about the incident on 05.03.2021, but complaint lodged 12 days thereafter and no reason given for the delay. Further referring to the evidence of PW2 submitted that PW2 gave improved and exaggerated version. Further submitted that the trial Court already suspended the sentence imposed on the petitioner. Further submitted that the petitioner has arguable points and fair chance of success in this appeal. Hence, he prays for granting suspension of sentence to the petitioner.

6.The learned Government Advocate (Crl. Side) on the other hand filed his counter and submitted that the case of the prosecution is that the defacto complainant one Selvarani lodged a complaint before the respondent police stating that she is residing at TNEB, Pushep Camp, Masinagudi along with family members. On 05.03.2021 at about 02.00 p.m., the defacto complainant's children were playing nearby their house, thereafter, they disappeared and therefore the complainant searched for them. When, the defacto complainant was nearing the house of the accused Kalimuthu which



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is located 8 houses away from her house, she hear the noise of her child (victim girl). Immediately, the defacto complainant knocked the door and after 10 minutes the accused opened the door. When the complainant asked the deceased as to why he took that much of time, he told that he slept and her children were watching TV and after saying that he closed the door. The complainant noticed that the accused was seen with tension and the dress worn by the victim girl appeared to be changed to its reverse. When the complainant asked her son, he told that he was watching TV and her daughter and the accused were lying on the cot. When the defacto complainant asked the victim, she told that she was watching TV after lying on the cot and at that time, the accused came near and pinched her chest, kissed, hugged and lastly pinched her private part and she told it is paining and at that time, the complainant came and knocked the door and immediately the accused put her dress and also his dress and brought the girl down from the cot and then he came and opened the door.

6.1. Further submitted that base on the above complaint, a case was registered in Gudalur All Women Police Station in Crime No.02 of 2021, under Section 7, 8 of POCSO Act 2012 and 342 IPC on 17.03.2021 at about



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19.30 hours by Tmt. Sumathi, then Sub Inspector of Police and the same was submitted before the respondent police and they took up the case for investigation. During the course of investigation, respondent Police went to the scene of occurrence and drew rough sketch and prepared observation mahazar in the presence of witnesses and examined the witnesses and recorded their statements. Further submitted that during the course of investigation, on 26.03.2021, the respondent police arrested the petitioner/accused and recorded his confession statement in the presence of witnesses and then, he produced before the learned Sessions Judge, Magalir Neethimandram, Udthagamandalam, The Nilgiris and sent to remand for judicial custody.

6.2. Further submitted that after completion of elaborate and detailed investigation, based on the statements of witnesses, material evidence, on 29.04.2021, the respondent police altered the section into 7 & 8 of POCSO Act, 342 IPC and then filed a charge sheet against the accused before the learned Sessions Judge, Magalir Neethimandram, Udthagamandalam, The Nilgiris and the same was taken on cognizance in Spl.C.C.No.24/2021. Thereafter charges framed against the accused under sections 342 IPC and 7 r/w. 8 of POCSO Act, 2012. Further submitted that the prosecution has



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examined witnesses P.W.1 to P.W.17 and marked exhibits Ex.P1 to Ex.P13 and no material objects marked. On the defence side, no witness marked, no exhibits and no material objects marked. After conclusion of due trial, the trial Court had convicted the petitioner as stated above. Further submitted that the trial Court already suspended the sentence of the petitioner and prays for dismissal of the petition.

7.Considering the submissions made and on perusal of the material available on record, it is seen that there has been some motive between the petitioner and TNEB official. The victim and other officials are all from the TNEB residential quarters. It is the case of the prosecution that the victim and her brother used to normally visit petitioner's house and playing there. PW1's complaint is that victim was sleeping besides the petitioner which cannot be straightaway construed as sexual assault. In view of the same, the finding of the Court below needs to be reconsidered. Further, the trial Court already suspended the sentence of the petitioner. In view of the same, this Court is inclined to suspend the sentence imposed on the petitioner.

8.Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal Appeal:



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(a) The petitioner/Accused is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each, with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Udhagamandalam, The Nilgiris.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Judge may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioner shall appear before the Trial Court once in three months at 10.30 a.m. on the first working day of the month, until the disposal of the appeal and if he is not able to appear before the Trial Court on that 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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9. Accordingly, this Criminal Miscellaneous Petition is ordered.

28.02.2024

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To

1. The Inspector of Police,
All Women Police Station,
Gudalur.
2. The Sessions Judge,
Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court),
Udhagamandalam, The Nilgiris.
3. The Public Prosecutor,
High Court, Madras.

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