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Crl.M.P.No.17007 of 2024 in Crl.A.No.1497 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.17007 of 2024
in Crl.A.No.1497 of 2024

Saravanan

... Petitioner/A1

Vs.

The State Rep. by
The Inspector of Police,
All Women Police Station,
Perur, Coimbatore District.
(Cr.No.12/2019)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 430 (1) of BNSS, to suspend the sentence imposed in Spl.S.C.No.110 of 2019 dated 02.03.2023 on the file of the learned Sessions Judge, Principal Special Court for exclusive Trial of cases under POCSO Act, Coimbatore and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.M.Vignesh

For Respondent : Dr.C.E.Pratap
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed seeking to



suspend the sentence imposed on the petitioner/A1 by judgment and order dated 02.03.2023 passed in Spl.S.C.No.110 of 2019 on the file of the learned Sessions Judge, Principal Special Court for exclusive Trial of cases under POCSO Act, Coimbatore, and to enlarge the petitioner on bail pending disposal of the appeal.

2. The case of the prosecution is that the petitioner and the victim, who were aged about 23 years and 16 years respectively, at the time of occurrence had a love affair; that the victim on her own volition went to the house of the petitioner on 26.02.2019 and A2, the uncle of the petitioner allowed the petitioner and the victim to stay in their house; that thereafter, the victim stayed in her grandmother's house till 10.04.2019; that the victim was once again taken to the house of A2 on 11.04.2019 and got married to the petitioner; that both petitioner and the victim stayed in the house of A2 from 11.04.2019 till 14.04.2019; and that the victim and the petitioner had sexual intercourse during that period.

3. The petitioner was convicted and sentenced by the trial Court as follows:

Offence under Section	Sentence imposed
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6 of POCSO Act	To undergo RI for ten years and to pay a fine of Rs.10,000/-, in default to undergo SI for six months
363 of IPC	To undergo RI for five y ears and to pay a fine of Rs.5,000/-, in default to undergo SI for six months.
The sentences were ordered to run concurrently.	

4. Heard Mr.M.Vignesh, learned counsel for the petitioner and Dr.C.E.Pratap, learned Government Advocate (Crl.Side) appearing for the respondent/State.

5. (i) The learned counsel appearing for the petitioner would submit that even according to the prosecution, it is a case of love affair and the conviction based on the sole testimony of the victim, cannot be sustained; that the evidence of the doctor [PW8] would falsify the prosecution case; that in any case, even if the prosecution case is accepted to be true, the alleged act is committed due to mutual innocence and biological attraction; that the petitioner is in custody from 02.03.2023; and that therefore, the sentence imposed on the petitioner may be suspended.

6. Heard the learned Government Advocate (Crl. Side) appearing for the respondent/State, who would submit that the prosecution had



established its case beyond reasonable doubt and consent is immaterial, since the victim was a minor at the time of occurrence and perused the counter affidavit filed by the respondent.

7. PW8-Doctor would depose that there are no injuries on the victim girl and there was no sign of forcible sexual intercourse recently. It is the case of the prosecution that there was a love affair between the petitioner and the victim. In the light of the admitted facts, it has to be examined whether there can be a conviction on the basis of the sole testimony of the victim, in the above appeal.

8. Considering the above facts and also the fact that the petitioner is in custody since 02.03.2023 and 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 petitioner.

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

- (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 Sessions Judge, Principal Special Court for



exclusive Trial of cases under POCSO Act, Coimbatore;

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- (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.

13.12.2024

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Issue order copy 16.12.2024

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SUNDER MOHAN, J.

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- To
1. The Sessions Judge,
Principal Special Court for exclusive Trial of cases under POCSO Act,
Coimbatore.
 2. The Inspector of Police,
All Women Police Station,
Perur, Coimbatore District.
 3. The Superintendent of Prisons,
Central Prison, Coimbatore.
 4. The Public Prosecutor,
Madras High Court.

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