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*Crl.M.P.No.19514 of 2023
in Crl.A.No.1547 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.19514 of 2023
in
Crl.A.No.1547 of 2023

Balan
S/o.Rangasamy

... Petitioner/Accused

Vs.

State represented by
The Inspector of Police,
All Women Police Station – Bhavani,
Erode District.
(Crime No.5 of 2021)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) and 439 of Cr.P.C to suspend the sentence imposed by learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Erode dated 13.09.2023 in Spl.S.C.No.29 of 2021 and enlarge petitioner on bail, pending disposal of the above Criminal Appeal.

For Petitioner : Mrs.V.Lakshmi
for Mr.N.Chinnaraj

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



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence of imprisonment imposed on him in Spl.S.C.No.29 of 2021 by a judgment dated 13.09.2023 passed by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/Accused in Spl.S.C.No.29 of 2021 was convicted by the trial Court by judgment dated 13.09.2023 for offence under Sections 11(i) punishable under Section 12 of the 'Protection of Children from sexual offences Act, 2012 (POCSO Act) and sentenced to undergo 3 years rigorous imprisonment and to pay a fine of Rs.1,000/-, against which, the petitioner filed Crl.A.No.1547 of 2023 before this Court along with suspension of sentence petition.

3.During trial, on the side of the prosecution, PW1 to PW13 examined and marked Exs.P1 to P16. On the side of the defence, two witnesses examined as DW1 and DW2 and marked Exs.D1 and D2. On conclusion of



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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 learned counsel for petitioner is that the petitioner was charged for offence under Section 11(i) punishable under Section 12 of POCSO Act and 506(i) of IPC (2 counts). The Trial Court acquitted the petitioner for offence under Section 506(i) IPC but convicted the petitioner for offence under Section 11(i) punishable under Section 12 of POCSO Act (1 count). In this case, two persons have been projected as victims, who are minor daughter of PW1 and both the victims are special child with hearing and speech impediment. He further submitted that the de-facto complainant/PW1/mother of the victim was employed as helper doing menial works under the petitioner in the year 2019. Thereafter, she was not called for any employment by the petitioner as she was not found suitable. He further submitted that though the case has been projected as though the petitioner had shown Rs.100/- winked the PW1's elder daughter and he was in inebriated condition. The elder daughter of PW1 died during the trial and this fact has been spoken only by PW2 the younger daughter, who gives an improved version. From the complaint and earlier statement it



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is seen that the petitioner winked the elder daughter. Since she passed away, through the younger daughter the petitioner had been falsely implicated. The trial Court in its judgment in paragraph 15 referred to the same. Further submitted that the occurrence said to have taken place on 24.02.2021 and a complaint was lodged on 26.02.2021 with two days delay. No reason given for the delay in lodging the complaint. Further submitted that the trial Court already suspended the sentence of 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.

5.The learned Government Advocate (Crl. Side) on the other hand filed his counter and submitted that the case of the prosecution is that the victim children are aged about 17 years and 12 years and they are differently abled persons. They suffer loss of hearing and speech and they use the signs to express everything to their mother. The accused Balan is their neighbour. The elder victim child completed tenth standard and younger one was studying fifth standard. On 24.02.2021 at about 12 noon they were on the way to use the common toilet, the accused under drunken mood called the elder child by blinking one eye showing Rs.100/- but the victims refused to



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go near him. The accused pulled their hands. The accused sexually harassed both the victim child. Then the victims returned home and their mother enquired them and in turn both informed the acts of the accused and that the mother of the child lodged a complaint before the All Women Police Station, Bhavani. Tmt.Maheswari, Sub Inspector of Police received the complaint from the mother of the victims, registered the case in Crime No.5/2021 under Sections 11, 12 of POCSO Act 2012 and despatched the original FIR along with the complaint to the Mahalir Neethi Mandram, Erode.

5.1.Further submitted that the then Inspector of Police Selvi. Vinothini had took up investigation and visited the scene of occurrence and prepared the Observation Mahazar and Rough Sketch in the presence of the witnesses. She examined the mother of the victims and as well examined the victims through an interpreter and recorded their statements. She also examined other witnesses namely Usharani and Thilageswari. Then on 02.03.2021 she gave requisition to the Head Master of the School of the child victims for School Certificate and on 03.03.2021 she gave requisition to the learned Additional Mahila Magistrate for recording the 164 Cr.P.C statements of the child victims. Then she was transferred. Thereafter, the then Inspector of Police Tmt.Ponnammal took up further investigation and arrested the



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accused near R.N.Pudur. and recorded his confessional statement. She then sent the accused for medical examination and remanded him to judicial custody. She then examined the defacto complainant and Easwaran and recorded their further statements she also examined witness Velumani and recorded his statement. On 11.03.2021 she produced the victim children through Head Constable Tmt.Manimegalai and the interpreter Usharani before the concerned court for recording their 164 Cr.P.C statements. On 16.03.2021, she examined the witnesses Umamaheswari, Raja, Maheswari and recorded their statements.

5.2.Further submitted that after completion of her investigation, altered the Section from 11(i) punishable under Section 12 of POCSO Act 2012 to Section 11(i) punishable under Section 12 of POCSO Act 2012 and 506(i) IPC and filed the final report before the trial court and the case was taken on file in Spl. S.C.No. 29 of 2021. In the trial court, PW1 to PW13 examined and Exhibits 1 to 16 marked and on the side of the defence D.W.1 and D.W.2 examined and Exhibits D1 and D2 marked.

5.3.The trial Court after full pledged and due trial convicted the



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accused as stated above. Based on the evidence of the prosecution witnesses supported by the medical version and the prosecution exhibits, the Trial Court has rightly convicted the accused. The Trial Court convicted the accused only after scrutinizing the evidence of the prosecution witnesses and supporting documents. The prosecution has proved each and every circumstances pointing to the guilt of the accused and the prosecution have proved the case beyond all reasonable doubts. Further submitted that the trial Court already suspended the sentence of the petitioner and prays for dismissal of the petition.

6.Considering the submissions made and on perusal of the material available on record, it is seen that there is some discrepancy in the complaint as well as in the evidence tendered. Further PW1's elder daughter is said to have been harassed by the petitioner and she died even before the trial. In view of the same, this Court finds that the finding of the Courts 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.

7.Accordingly, the relief of suspension of sentence and bail are



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granted on the following conditions till the disposal of the above Criminal

Appeal:

(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), Erode.

(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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(d) While executing the sureties, the petitioner is directed to file an affidavit stating that he will not cause any hindrance or disturbance to all concerned to the victim and her family members in any manner.

8. Accordingly, this Criminal Miscellaneous Petition is ordered.

28.02.2024

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To

- 1.The Inspector of Police,
All Women Police Station – Bhavani,
Erode District.
- 2.The Sessions Judge,
Magalir Neethimandram (Fast Track Mahila Court),
Erode.
- 3.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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