



Crl.M.P.No.17284 of 2024 in Crl.A.No.1232 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.17284 of 2024
in Crl.A.No.1232 of 2024

Munusamy

... Petitioner

Vs.

The State rep. by
The Inspector of Police,
All Women Police Station,
Arani,
Tiruvannamalai District.
Crime No.15/2021.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(i) of Code of Criminal Procedure/430(1) of BNSS, to suspend the sentence and enlarge the petitioner on bail imposed in Spl.S.C.No.63 of 2021 on the file of the Special Court (POCSO Cases), Tiruvannamalai, Tiruvannamalai District for exclusive trial of cases under POCSO Act at Coimbatore dated 14.08.2024 pending disposal of the above Criminal Appeal.

For Petitioner : Mr.M.Vignesh
For Respondent : Dr.C.E.Pratap,
Government Advocate (Crl. Side)



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ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence of imprisonment imposed in Special S.C.No.63 of 2021, dated 14.08.2024 by the learned Sessions Judge, Special Court (POCSO Cases), Tiruvannamalai and to enlarge the petitioner on bail pending disposal of the appeal.

2.The case of the prosecution is that on 18.09.2021, at about 11.00 a.m., when the victim aged about 8 years was playing near the house, the petitioner lured the victim and took her to a bathroom in his house and touched her breast and other parts with sexual intent and committed penetrative sexual assault by inserting his finger in her private part.

3.The petitioner was convicted for offences under Sections 366 and Section 9(m) r/w 10 of Protection of Children from Sexual Offences Act, 2012 and in so far as the offence under Section 366 of IPC, the petitioner was sentenced to undergo five years Rigorous Imprisonment and to pay a



fine of Rs.1,000/- in default of payment of fine to undergo Simple Imprisonment for one year and in so far as the offence under Section 9(m) r/w 10 of Protection of Children from Sexual Offences Act, 2012, the petitioner was sentenced to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default of payment of fine to undergo Simple Imprisonment for one year *vide* judgment, dated 14.08.2024 made in Special S.C.No.63 of 2021.

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

5.The learned counsel for the petitioner would submit that though the case of the prosecution was that the petitioner had committed penetrative sexual assault, the victim had not supported the prosecution case; that the victim had only stated that the petitioner kissed and touched her breast and stomach and therefore the petitioner was convicted for the offence under Section 9(m) r/w 10 of POCSO Act; that the trial Court having disbelieved



the prosecution case with regard to penetrative sexual assault, ought to have disbelieved the victim even as regards sexual assault; that there are several arguable points in the appeal which requires consideration; and that the petitioner is aged about 72 years and he is in custody from 14.08.2024 and prayed for suspension of sentence.

6.The learned Government Advocate (Crl. Side) *per contra* would submit the Trial Court after analyzing the evidence had correctly found the petitioner guilty of the offence under Section 366 and Section 9(m) r/w 10 of Protection of Children from Sexual Offences Act, 2012; and that therefore the petitioner has not made out any ground for suspension of sentence.

7.Considering, the fact that the prosecution has failed to establish the offence of penetrative sexual assault; the deposition of the victim girl and the submissions made by the learned counsel for the petitioner; the age of the petitioner; that the petitioner is in custody from 14.08.2024; that there are arguable points in the above appeal which requires consideration; and



that 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.

8. Accordingly, this criminal miscellaneous petition stands allowed and 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/- (Rupees ten thousand only), with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Special Court (POCSO Cases), Tiruvannamalai;

(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 further orders and if he is not



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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.

05.12.2024

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To

- 1.The Sessions Judge,
Special Court (POCSO Cases),
Tiruvannamalai.
- 2.The Inspector of Police,
All Women Police Station,
Arani, Tiruvannamalai District.
- 3.The Central Prison,
Vellore.
- 4.The Public Prosecutor,
Madras High Court.



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SUNDER MOHAN, J.

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