



Crl.M.P.No.19901 of 2023 in Crl.A.No.807 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.11.2024

PRONOUNCED ON : 14.11.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.19901 of 2023

in

Crl.A.No.807 of 2023

Vignesh

... Petitioner/Sole Accused

Vs.

The State Rep. by
The Inspector of Police,
All Women Police Station,
Neyveli.
(Cr.No.16/2020)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (1) Cr.P.C., to suspend the sentence imposed in Spl.S.C.No.12 of 2021 dated 15.09.2022 on the file of the learned Sessions Judge, Special Court for Exclusive Trial cases under POCSO Act, Cuddalore and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.V.V.Sairam

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/accused by judgment and



order dated 15.09.2022 passed in Spl.S.C.No.12 of 2021 on the file of the learned Sessions Judge, Special Court for Exclusive Trial cases under POCSO Act, Cuddalore, and to enlarge the petitioner on bail pending disposal of the appeal.

2. (i) The case of the prosecution is that on 14.12.2020, at about 6.00 p.m., when the parents of the victim, who was studying in 8th standard, were not in station, the petitioner/accused aged about 24 years, followed the victim while she had gone to a shop and expressed his love for her; that when the victim refused to reciprocate, the petitioner had requested the victim to speak to him for some time; and that thereafter, he took the victim to a whip grove (சவுக்கு தோப்பு), hugged and kissed her, inappropriately touched her and committed penetrative sexual assault.

(ii) It is the further case of the prosecution that after she came back home late that night, she informed her aunt that the petitioner hugged and kissed her; that after her parents returned home on 15.12.2020, the victim is said to have told her parents that the petitioner committed penetrative sexual assault; and that the complaint was lodged at 2.00 a.m., on



16.12.2020.

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3. The petitioner, was convicted for the offence under Sections 3 and 4 of the POCSO Act, r/w Section 376(3) of the IPC and sentenced to undergo rigorous imprisonment for twenty years and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for three months.

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

5. The learned counsel appearing for the petitioner would submit that the age of the victim as per the evidence of the Doctor, would show that she was close to 17 years; that the petitioner and the victim were in a love affair; that aggrieved by the said relationship, the parents of the victim had instituted a false complaint after deliberation; that there was a delay in registration of the FIR; that there are several contradictions in the evidence of witnesses; that the petitioner is in custody from his date of arrest i.e., from 16.12.2020 and therefore, the sentence imposed on the petitioner may be suspended.



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6. The learned Government Advocate (Crl. Side) *per contra* submitted that it is not a case where the victim had a love affair with the petitioner and the evidence would show that the petitioner had forced himself on the victim; that the prosecution had proved its case beyond reasonable doubt; and that therefore, the petitioner would not be entitled to suspension of sentence.

7. Admittedly, the petitioner is in custody from 16.12.2020. The evidence of the Doctor, who had conducted radiological examination would show that the victim was aged above 16 years and less than 17 years. The earliest version of the victim to her aunt is that the petitioner had hugged and kissed her. The complaint was lodged on 16.12.2020 at 2.00 a.m., while the alleged occurrence is said to have taken place on 14.12.2020 at 6.00 p.m. The petitioner has raised several arguable points in the above appeal.

8. Considering the above, the age of the petitioner and the victim and the fact that the petitioner is in custody from 16.12.2020 and also the fact that the appeal is not likely to be taken up in the near future, this



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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, Special Court for Exclusive Trial cases under POCSO Act, Cuddalore;
- (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.

14.11.2024

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SUNDER MOHAN, J.

ars

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

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