



*CrI.M.P.No.19896 of 2023
in CrI.A.No.1629 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2024

CORAM:

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

CrI.M.P.No.19896 of 2023
in CrI.A.No.1629 of 2023

Prasanth

... Petitioner

Vs.

State rep. by
The Inspector of Police,
W-19 All Women Police Station,
Adyar, Chennai.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence passed in Spl.S.C.No.63 of 2020 dated 21.11.2023 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Chennai and enlarge the petitioner on bail pending appeal.

For Petitioner : Mr.R.Rajan
for Mr.G.P.Kothandaraman

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



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*Crl.M.P.No.19896 of 2023
in Crl.A.No.1629 of 2023*

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai by order dated 21.11.2023 made in Spl.S.C.No.63 of 2020 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused was convicted by the Trial Court in Spl.S.C.No.63 of 2020 for the offences under Sections 448 IPC and 10 r/w. 18 of Protection of Children from Sexual Offences Act, 2012 [POCSO Act] and sentenced him to undergo three years and to pay a fine of Rs.5,000/- each, in default, to undergo one month simple imprisonment for the offence under Section 10 r/w. 18 of POCSO Act and to undergo six months imprisonment for the offence under Section 448 IPC. Both the sentences to run concurrently. Against which, the present appeal is filed along with suspension of sentence.



*Crl.M.P.No.19896 of 2023
in Crl.A.No.1629 of 2023*

WEB COPY

3.The gist of the case is that on 05.06.2018 in the midnight when the victim girl was sleeping at her house along with her mother, the petitioner/accused trespassed into their house with an intention to commit sexual offence, attempted to sexually assault the victiming girl by closing her mouth with his hands and also intimidated her family members with dire consequences. Since the victim girl raised alarm, her mother woke up and attempted to catch the accused. But the petitioner/accused escaped from the place of occurrence. Thereafter, the same was informed to the father of the victim girl, who lodged a complaint and thereafter, on conclusion of investigation, charge sheet filed on 16.10.2018.

4.Before the Trial Court, on the side of the prosecution P.W.1 to P.W.10 were examined and Ex.P1 to Ex.P10 were marked. On the side of the petitioner/accused, no witness was examined and no documents were marked. On conclusion of the trial, the Trial Court convicted the petitioner as stated above.



*Crl.M.P.No.19896 of 2023
in Crl.A.No.1629 of 2023*

WEB COPY

5.The contention of the learned counsel for the petitioner is that the petitioner and the victim girl are residing in the same area, there was some dispute with regard to collection of potable water, there was some animosity between the petitioner's family and the victim's family. He would submit that the petitioner had not entered into the house of the respondent, the case projected by the prosecution is that the door was unlocked and the petitioner entered into the house. It is the admitted case of the petitioner that he placed his hands only on the mouth of the victim girl and not on any other sensitive or private parts. The petitioner had no inclination or intention to commit any sexual assault as projected by the prosecution. In this case, P.W.1 is the father of the victim girl, P.W.2 is the mother of the victim girl, P.W.3 is the victim girl, P.W.4 is the paternal uncle of the victim girl and P.W.6 is the neighbour. P.W.8/Doctor who examined the victim girl states that on medical examination no traces of any injury was found. He further submitted that the Trial Court ought to have acquitted the petitioner finding that there is no sexual intention of assault.



*Crl.M.P.No.19896 of 2023
in Crl.A.No.1629 of 2023*

WEB COPY

6.Learned Additional Public Prosecutor on the other hand opposed the contention of the petitioner and submitted that the petitioner entered into the house of the victim girl/P.W.3, who raised alarm and on hearing the same, P.W.2/mother of the victim girl found the petitioner running out of the house which is corroborated by P.W.6. P.W.1/father of the victim girl lodged a complaint, the respondent police took up the investigation, examined the witnesses and the accused was arrested. He would submit that the accused taking advantage of the unbolted house, entered into the house and attempted to commit sexual assault on the victim girl but for the alarm raised by the victim girl, she would have been subjected to serious assault. He further submitted that the judgment is of recent one and prayed for dismissal of this petition.

7.Considering the submissions made and on perusal of the materials, it is seen that the petitioner was convicted for the maximum period of three years. The Trial Court had already suspended the sentence imposed on the petitioner and he was on bail during investigation and trial. The admitted



*Crl.M.P.No.19896 of 2023
in Crl.A.No.1629 of 2023*

WEB COPY

case of the prosecution is that the petitioner placed his hands on the mouth of the victim girl and not in other parts of the body. Further the petitioner had sexual intent cannot be inferred without further materials. In view of the same, the judgment of the Trial Court needs to be re-looked. The petitioner's contention that there has been animosity between the petitioner's family and the victim's family cannot be brushed aside. Hence, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.

8. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.5,000/- (Rupees Five Thousand only) with two sureties each for a like sum to the satisfaction of the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai.

10. Further, the petitioner shall appear before the Trial Court once in three months at 10.30 a.m. until the disposal of the appeal and if he is not



*CrI.M.P.No.19896 of 2023
in CrI.A.No.1629 of 2023*

WEB COPY

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.

11. Accordingly, this Miscellaneous Petition is ordered.

09.01.2024

cse

To

1. The Inspector of Police,
W-19 All Women Police Station,
Adyar, Chennai.
2. The Sessions Judge,
Special Court for Exclusive Trial
of Cases under POCSO Act,
Chennai.
3. The Public Prosecutor,
High Court, Madras.



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*Crl.M.P.No.19896 of 2023
in Crl.A.No.1629 of 2023*

M. NIRMAL KUMAR, J.

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**Crl.M.P.No.19896 of 2023
in Crl.A.No.1629 of 2023**

09.01.2024