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Crl.MP.No.20153 of 2023
in Crl.A.No.1649 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.20153 of 2023

in

Crl.A.No.1649 of 2023

Subash

... Petitioner/Appellant/Accused - 3

Versus

State represented by
The Inspector of Police,
All Women Police Station, Gingee,
Villupuram District.
Crime No.2 of 2020

...Respondent/Complainant

Prayer:- Civil Miscellaneous Petition filed under Section 389 [1] of Cr.P.C., to suspend the sentence imposed in Spl.S.C.No.75 of 2020 dated 27.10.2023 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Villupuram and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : M/s.A.M.Rahamath Ali

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor



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Assisted by
Mr.C.Aravind

ORDER

[Order of the Court was made by SUNDER MOHAN, J.]

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner/third accused by Judgment and order dated 27.10.2023 passed in Spl.S.C No.75 of 2020 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Villupuram, and to enlarge the petitioner/third accused on bail pending disposal of the criminal appeal.

2. The petitioner/third accused in the above Sessions Case, was convicted and sentenced as follows:

Offence under Section	Sentence imposed
366 of the IPC	To undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for one month.
5(g) and 6 of the POCSO Act 2012	To undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for three months.
Sentences were ordered to run concurrently.	



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3. Challenging the above conviction and sentence, the petitioner/third accused has filed the above criminal appeal and he seeks suspension of sentence and bail in the present petition.

4. Heard Mr.A.M.Rahamath Ali, learned counsel for the petitioner/third accused and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the respondent/State.

5. The case of the prosecution is that when the victim girl/P.W.1 went to attend nature's call, she was called by the second accused to come to the land of one Alamelu in the guise of gifting her dress material; that she was made to get into a car which was parked in the said land, the first and second accused committed penetrative sexual assault; and that the petitioner/third accused, who was also in the car, had committed sexual assault by touching her breast.

6.(i) Mr.A.M.Rahamath Ali, the learned counsel for the petitioner/third accused, submitted that even as per the case of the



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prosecution, the petitioner was not involved in the offence of penetrative sexual assault and that it is a case of love affair between the second accused and the victim/P.W.1; and that the allegation against the petitioner in any case, is false. Hence, he prayed for a suspension of sentence for the petitioner.

(ii). The learned counsel for the petitioner/third accused also pointed out the averments in the First Information Report and the evidence of the victim/P.W.1.

7. Mr.E.Raj Thilak, the learned Additional Public Prosecutor appearing for the respondent/State, *per contra*, submitted that the victim's evidence is cogent and convincing, and therefore, the petitioner has not made out a case of suspension of sentence.

8. We have carefully considered the rival submissions and perused the record.



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9. The petitioner/third accused is in custody from May 2020. Even as per the prosecution case, the petitioner was not involved in the offence of penetrative sexual assault. The FIR lodged by the victim/P.W.1 and her evidence confirms the said fact. The allegation against the petitioner is that he committed sexual assault by touching the breast of the victim.

10. Considering the nature of the overt act, the offence alleged against the petitioner, the fact that the petitioner is in custody from 25.05.2020, and that the appeal is not likely to be taken up in the near future, we are inclined to suspend the sentence insofar as the petitioner/third accused alone is concerned.

11. Accordingly, this criminal miscellaneous petition stands allowed and the sentence of imprisonment is suspended and the sentence imposed on the petitioner/third accused is suspended on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two independent sureties,



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each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Villupuram;

(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.

[M.S.R.,J.] [S.M.,J.]
25.03.2024

dk
Speaking/Non-Speaking order
Neutral Citation: Yes/No

Note to Registry:

1. Issue order copy by 26.03.2024



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2. Upload the order forthwith.

Copy to:-

- 1.The Sessions Judge,
Special Court for Exclusive Trial of Cases
under POCSO Act,
Villupuram.
- 2.The Inspector of Police,
All Women Police Station, Gingee,
Villupuram District.
- 3.The Superintendent of Prisons,
Central Prison, Cuddalore.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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