



Crl.MP (MD) No.18310 of 2023 in Crl.A(MD)No.1020 of 2023

G.ILANGOVAN, J

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This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the Principal Special Court for Exclusive Trial of Cases under POCSO Act, 2012 Sivagangai, Sivagangai District, in Special SC No.44 of 2018, dated 09/10/2023 and enlarge the petitioner on bail, pending disposal of the above said Criminal Appeal.

2.The case of the prosecution brief:-

The victim girl who was examined as PW2 is a resident of the village of the accused. The accused is working in Tamil Nadu State Transport Corporation and he is also running a petty shop in his village. On 19/08/2018 at about 07.00 am, the child went to the petty shop of the accused to purchase some kolam power materials. At that time, the accused invited the child inside the petty shop, misbehaved with her by kissing her repeatedly on the cheeks for more than 10 minutes. On the basis of the complaint given by the de-facto complainant, who is the mother of the victim, a case in Crime No.3 of 2018 was registered by the respondent police for the offence under section 9(m) r/w 10 of the POCSO Act, 2012.



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3.The case was tried by the Sessions Judge, Principal Special Court for Exclusive Trial of cases under POCSO Act, 2012, Sivagangai, in Special SC No.44 of 2018. The accused was charged for the offence under section 9(m) r/w 10 of POCSO Act, 2012.

4.On the side of the prosecution, 9 witnesses were examined and 7 documents marked. On the side of the accused, no oral and documentary evidence was adduced.

5.At the conclusion of the trial process, the trial court found the accused guilty of the offence under section 9(m) r/w section 10 of POCSO Act, 2012 and convicted and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.5,000/- (Rupees One thousand only) in default, he shall undergo simple imprisonment for a period of three months.

6.Against which, this appeal is preferred by the appellant. Pending appeal, this criminal miscellaneous petition was taken out by the petitioner seeking suspension of sentence.

7.Heard both sides.



8.The judgment was pronounced by the trial court on 09/10/2023.

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9.The learned Senior counsel appearing for the petitioner would submit that there is a motive between the de-facto complainant and the accused herein over the shifting of the shop. When the accused refused to shift the shop, a false complaint has been lodged. Further submitted that there is a delay of one month in lodging the complaint; The complaint given by the de-fato complainant on 19/01/2016 was suppressed by the prosecution.

10.The further argument of the learned Senior counsel is that even as per the case of the prosecution, the time of the component was fixed only in the evening, there is no occasion for the child to went to the shop of the accused to purchase the kolam power materials at 07.00 am. There is discrepancy between the evidence over the occurrence. No neighbour was examined.

11.Per contra, the learned Additional Public Prosecutor would submit that the child was studying 7th standard and she has clearly deposed about the event not only before the trial court, but during the course of the enquiry under section 164 Cr.P.C. According to him, no indulgence need be shown to suspend the sentence.



12.Apart from that, it is also submitted by him that there is clear evidence on record that whenever the child saw the accused, she was fearful. So according to him, this is premature stage. The motive suggested by the accused is not established and believable also.

13.But the fact remains that there was a delay of one month in lodging the complaint. The reason for the delay, according to the prosecution, was that after the occurrence, the accused promised to shift the shop from that place. One month time was granted to him as undertaken by him. But did not keep up his promise. So only after that, the complaint was given. So there was a delay. To show the same, no one was examined on the side of the prosecution. These are the lapses on the part of the prosecution.

14.Regarding the earlier complaint on the date of the occurrence itself, no evidence is available. But it admitted by the de-facto complainant herself that such a complaint was given and only in that complaint, the petitioner undertook to shift the shop.

15.When serious allegation has been made against the accused, it is unbelievable that the police gave time to the accused to shift the shop without registering the



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case. These are the grounds which are available to the case of the appellant, on the face of the records.

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16.Considering the duration of the custody and no bad antecedent is reported against the petitioner, this criminal miscellaneous petition is allowed and the substantive sentence of imprisonment alone is suspended and he is directed to be enlarged on bail on condition that he 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 Sessions Judge, Principal Special Court for Exclusive Trial of cases under POCSO Act, 2012, Sivagangai, and on further condition that he shall stay away from the occurrence village for three months and must report before the **Judicial Magistrate No.1, Sivagangai on the first working day of every week until further orders.**

09/08/2024

Index : Yes/No
Internet: Yes/No

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To,

- 1.The Sessions Judge,
Principal Special Court for
Exclusive Trial of cases under POCSO Act, 2012,
Sivagangai
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Superintendent,
Central Prison,
Madurai.



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