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Crl.M.P.No.3394 of 2024
in Crl.A.No.232 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2025

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.3394 of 2024

in

Crl.A.No.232 of 2024

K.Anandh

... Petitioner /Accused

Vs.

The State Represented by
Inspector of Police,
All Women Police Station (West),
Coimbatore City, Coimbatore.
(Crime No.4 of 2020)

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 439 of Cr.P.C. praying to suspend the sentence in judgment of conviction dated 22.01.2024 passed in Special Calendar Case No.66 of 2020 by the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore District, and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.C.D.Sugumar

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 imposed on the petitioner by the judgment dated 22.01.2024 passed in Spl.C.C.No.66 of 2020 by the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, pending disposal of the above criminal appeal and enlarge the petitioner on bail.

2. It is the case of the prosecution that the victim child aged about 5 years was residing with her parents and she used to go to school by auto every morning and return home at 4.00 p.m.; that on 06.02.2020 at about 4.00 p.m. when the victim girl returned to her home and playing outside her house, the petitioner/accused induced her that he would provide chocolate and took her inside the godown and put his hands inside the victim's baniyan and pinched her chest and also placed his finger on her private part; that also threatened the victim and that on the next day on 07.02.2020 at about 4.00 p.m., a complaint was lodged.



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3. The petitioner/Accused in Spl.C.C.No.66 of 2020 was convicted by the Trial Court by the judgment dated 22.01.2024 for the offences under Sections 5(m), 5(l) r/w 6 of POCSO Act and 379AB and 506(i) of I.P.C. and sentenced to undergo 20 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for one year for the offence under Sections 5(m), 5(l) r/w 6 of POCSO Act and 379AB of I.P.C. and for the offence under Section 506(i) of I.P.C., sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for two months. Aggrieved by the same, he filed Crl.A.No.232 of 2024 before this Court along with the instant miscellaneous petition seeking suspension of sentence and bail.

4.The learned counsel for the petitioner would submit that the prosecution case is false; that the conviction which is based on the sole testimony of the victim cannot be sustained; that PW3-maternal aunt of the victim had stated that on 25.01.2020 there was a wordy altercation between the victim's mother and the petitioner as regards the beating of the child; that the instant complaint was lodged only to wreak vengeance; that the evidence of the Doctor would show that the victim was not subjected to any assault. He



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would further submit that the petitioner has spent more than two years in custody during the trial and after conviction and prayed for granting suspension of sentence.

5.Heard the learned Government Advocate (Crl. Side) and perused the counter affidavit. He would submit that the victim's evidence is cogent and there is no infirmity in the judgment of the trial Court.

6.It is seen from the evidence of PW3 that on 25.01.2020 there was a wordy quarrel between the victim's mother and the petitioner and the petitioner said to have scolded the victim's mother for beating the child; that thereafter when he complained about the said incident to the victim's father/PW7, he attacked the victim with hands. Thus, it is seen that there was a prior enmity between the victim's family and the petitioner. Be that as it may. The prosecution case is based on the sole testimony of the victim. The Doctor/PW12 had deposed that no injuries were found on the genital part or any other part of the victim and there was no evidence of forcible vaginal intercourse prior to examination. In the light of the above evidence, this Court has to examine, whether the conviction can be sustained on the sole testimony



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of the victim. Further *prima-facie* this Court finds that it is not clear from the evidence of the victim as to whether the penetrative sexual assault was committed. The appeal is not likely to be taken up in the near future. Considering the above and the fact that the petitioner is in custody from the date of conviction and also in custody during the trial for a period of one year, this Court is inclined to grant the relief of suspension of sentence to the petitioner.

7. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioner is suspended till the disposal of the above Criminal appeal 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, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore;
- (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



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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.

30.01.2025

rsi

Issue order copy by 31.01.2025
Upload the order copy forthwith.

To

- 1.The Sessions Judge,
Principal Special Court for Exclusive Trial of Cases under POCSO Act,
Coimbatore.
- 2.Inspector of Police,
All Women Police Station (West),
Coimbatore City, Coimbatore.
- 3.The Superintendent,
Central Prison,
Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J.

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