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*Crl.M.P.No.12944 of 2024
in Crl.A.No.1163 of 2024*

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: **24-01-2025**
CORAM
THE HONOURABLE MR JUSTICE SUNDER MOHAN

CRL MP NO. 12944 of 2024
in Crl.A.No.1163 of 2024

P.Murugan
S/o. Perumalraj, No.10/27,E.B. Nagar,
Makkinampatti Pollachi, Coimbatore Dt.

Appellant(s)

Vs

State Rep.By
The Inspector Of Police, All Women Police Station,
Pollachi, Coimbatore

Respondent(s)

For Appellant(s):

Mr.S.Gurunandhikesan

For Respondent(s):

Mr.R.Vinoth Raja
Government Advocate (Crl. Side)

PRAYER: Criminal Miscellaneous Petition has been filed under Section 430(1) of BNSS praying to suspend the sentence imposed in S.C.No.92 of 2024 on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, dated 31.07.2024 and enlarge the petitioner on bail pending disposal of the above appeal.

ORDER

This Criminal Miscellaneous Petition has been filed under Section 430(1) of BNSS praying to suspend the sentence imposed in S.C.No.92 of



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2024 on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, dated 31.07.2024 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The case of the prosecution is that the victim child aged 3 1/2 years is the grand daughter of the defacto complainant; that the defacto complainant was a daily wage earner that she was cooking for the employees of a private bank, who was staying in the first floor of the house owned by the petitioner / accused; that on the date of occurrence i.e. 12.02.2024 at about 3.30 p.m. when the defacto complainant came to the ground floor in search of her missing grand daughter, she found that the petitioner was sitting on the sofa in the hall and the victim girl was standing before him showing her back to him; that the petitioner was attempting to place his private part below the victim's waist and between her legs; that he was also touching the genital parts of the victim; and that while she enquired her grand daughter, she came to know from her grand daughter that the petitioner had been doing the very same act on several occasions.

3. The petitioner/Accused in S.C.No.92 of 2024 was convicted by the



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Trial Court vide judgment dated 31.07.2024 for the offences U/s.5(m) punishable U/s.6 of POCSO Act, 2012, and 376 AB of I.P.C. and sentenced to undergo twenty years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo one year simple imprisonment for offence under Section 376 AB of I.P.C. Aggrieved by the same, he filed Crl.A.No.1163 of 2024 before this Court along with the instant miscellaneous petition seeking suspension of sentence and bail.

3.The learned counsel for the petitioner submitted that the petitioner is aged about 78 years and he is in custody from 13.02.2024; that there are contradictions in the evidence of victim and in the evidence of her grand mother, P.W.2; that the version of P.W.2 that she had witnessed the occurrence cannot be believed; that there are several arguable points in the appeal which requires consideration, as prayed that considering the period of incarceration and age of the petitioner, the sentence imposed on the petitioner may be suspended.

4.Heard Mr.R.Vinoth Raja, the learned Government Advocate (Crl. Side) and perused the counter affidavit.



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5. On a perusal of the evidence, it is seen that the victim had stated before the doctor that the petitioner had touched her private part. The doctor, P.W.7 had not found any external injuries in the private parts of the victim. The prosecution case that the petitioner had attempted penetrative sexual assault through the anus of the victim, is contrary to the victim's version before the doctor. In such circumstances, this Court has to examine whether the conviction can be sustained on the sole testimony of the victim child who was 3 1/2 years old at the time of occurrence, in this appeal which is also not likely to be taken up in the near future.

6. Considering the above and the fact that there are several arguable points in the above appeal and also considering the age of the petitioner, this Court is inclined to suspend the sentence.

8. 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/accused shall execute a bond for a sum of



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Rs.10,000/-, with two sureties, each for a like sum to the satisfaction of the learned Principal Special Judge, 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 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.

24.01.2025
(2/2)

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Issue order copy by .01.2025
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SUNDER MOHAN, J.

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To

1.The Principal Special Judge
Special Court for Exclusive trial of
cases under POCSO Act, Coimbatore.

2. The Inspector Of Police
All Women Police Station
Pollachi
Coimbatore

3.The Superintendent,
Central Prison
Coimbatore

4.The Public Prosecutor,
High Court, Madras.

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