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*Crl.M.P.No.18061 of 2023
in Crl.A.No.952 of 2023*

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

CRL MP NO. 18061 of 2023
in Crl.A.No.952 of 2023

Prabakran

Petitioner

Vs

State rep. By
The Inspector of Police
Chetpet Police Station
Thiruvannamalai District
Crime No.438 of 2015

Respondent(s)

For Petitioner(s):

Mr.L.Mahendran

For Respondent(s):

Dr.C.E.Pratap Govt Advocate (Crl Side)

PRAYER: Criminal Miscellaneous Petition has been filed under Section 430(1) of BNSS praying to suspend the sentence passed in Spl.S.C.No.78 of 2019 passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thiruvannamalai, dated 24.07.2023 pending disposal of the above criminal appeal and enlarge the petitioner on bail.

ORDER

This Criminal Miscellaneous Petition has been filed under Section



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430(1) of BNSS praying to suspend the sentence passed in Spl.S.C.No.78 of 2019 passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thiruvannamalai, dated 24.07.2023 pending disposal of the above criminal appeal and enlarge the petitioner on bail.

2.The case of the prosecution is that on 01.10.2015 at about 6.00 p.m. the petitioner who was closely related to the victim girl aged 15 years, kidnapped her and took the victim in his TATA ACE vehicle and parked the car near his grand father's house; that on 02.10.2015 at about 1.30 a.m. the petitioner forcibly had sexual intercourse with the victim; and thus committed the offence U/s. 4, 8 of POCSO Act.

3. The petitioner/Accused in Special S.C.No.78 of 2019 was convicted by the Trial Court vide judgment dated 24.07.2023 for the offences U/s.366 I.P.C., sentenced to undergo R.I. for 10 years with a fine of Rs.1,000/- in default to undergo one year S.I.. For the offence U/s.4 of POCSO Act, 2012, he was sentenced to R.I. for 10 years, with a fine of Rs.1,000/- in default to undergo S.I. for 1 year. Aggrieved by the same, he filed Crl.A.No.952 of 2023 before this Court along with the instant miscellaneous petition seeking



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suspension of sentence and bail.

4.Mr.John Sathyan, the learned learned Senior counsel for the petitioner submitted that the parents of the petitioner were acquitted; that the evidence discloses consent and the evidence of victim does not inspire confidence as she has made contradictory statements at various stages; that there are several arguable points in the above appeal requires consideration and the petitioner who is a close relative to the victim is in custody from 24.07.2023 and prayed for suspension of sentence.

5.Heard Dr.C.E.Pratap, the learned Government Advocate (Crl. Side).
Perused the counter affidavit of the respondent.

6.The learned Government Advocate submitted that the evidence of the victim inspires confidence and there was no reason for her to falsely implicate the petitioner; and that the petitioner hence has not made out a ground for suspension of sentence.

7.On a perusal of the records it is seen that the victim had told the



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doctor that she had voluntarily gone with the petitioner. However, the victim, P.W.7 would state in her deposition that the petitioner forced her to go with him. That apart, initially she had stated that there was an attempt made to commit penetrative sexual assault. From the evidence of the doctor, it is not clear as to whether the penetrative sexual assault was committed on the victim. The victim and the petitioner are closely related to each other. The petitioner was aged 23 years at the time of occurrence. Even if the prosecution case is accepted, it appears to be a case of biological attraction due to mutual innocence. This Court has to examine in the appeal as to whether the conviction can be sustained on the sole testimony of the victim. The appeal is not likely to be taken up in the near future.

8. Considering the above, and the period of incarceration this Court is inclined to suspend the sentence. 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 petitioners is ordered to be released on bail on the following conditions:

- (i) The petitioner/accused shall execute a bond for a sum of Rs.10,000/-, with two sureties, each for a like sum to the



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satisfaction of the learned Special Judge, Special Court for Exclusive Trial of Cases Under POCSO Act, Thiruvannamalai.

(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 they are not able to appear before the trial Court on any day, they shall make arrangements to file an application U/s.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

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Issue order copy by 28.01.2025
Upload the order copy forthwith.

To

1.The Special Judge,
For Exclusive Trial of Cases Under
POCSO Act, Thiruvannamalai.



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SUNDER MOHAN, J.

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2.The Inspector Of Police
Chetpet Police Station
Thiruvannamalai District

3.The Superintendent,
Central Prison
Vellore

4.The Public Prosecutor,
High Court, Madras.

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