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Crl.M.P.No.163 of 2025
in Crl.A.No.25 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2025

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.163 of 2025

in

Crl.A.No.25 of 2025

Musthaba

... Petitioner /Accused

Vs.

1.The State

Represented by the Inspector of Police,
All Women Police Station,
Ooty Rural,
The Nilgiris District.
(Crime No.4 of 2021)

2.The Deputy Superintendent of Police,

Ooty Rural, The Nilgiris District.

... Respondents

PRAYER: Criminal Miscellaneous Petition has been filed under Section 430(1) of BNSS praying to suspend the sentence imposed on the petitioner/appellant/accused on 20.11.2023 in Special C.C.No.28 of 2021 by the learned Sessions Judge of Magalir Neethimandram, (FTMC), Udhagamandalam, The Nilgiris and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.



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For Petitioner : Mr.R.Chakkaravarthy
For Respondents : Dr.C.E.Pratap
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the judgment dated 20.11.2023 passed in Spl.C.C.No.28 of 2021 by the learned Sessions Judge, Magalir Neethimandram (FTMC), Udthagamandalam, The Nilgiris, pending disposal of the above criminal appeal and enlarge the petitioner on bail.

2.It is the case of the prosecution that the victim girl aged about 13 years was subjected to sexual assault by the petitioner, aged about 70 years; that the petitioner and victim are neighbours; that on 22.04.2021 in the morning, the petitioner had locked the victim inside the house and fondled her breast, kissed her and touched her private part.



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3.The petitioner/Accused in Spl.C.C.No.28 of 2021 was convicted by the Trial Court by the judgment dated 20.11.2023 for the offences under Sections 342 and 506(ii) of I.P.C. and Sections 7 r/w 8 of POCSO Act and Section 3(1)(xi) of SC/ST Act and sentenced to undergo 1 year rigorous imprisonment and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for three months for the offence under Section 342 of I.P.C., sentenced to undergo 1 year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for six months for the offence under Section 506(ii) of I.P.C., sentenced to undergo 5 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for one year for the offence under Section 7 r/w 8 of POCSO Act and for the offence under Section 3(1)(xi) of SC/ST Act, sentenced to undergo 1 year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for six months. Aggrieved by the



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same, he filed Crl.A.No.25 of 2025 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 allegations against the petitioner are false and that there are several arguable points in favour of the petitioner. Considering the fact that out of the fixed period of sentence of 5 years, the petitioner is in custody for 1 year 7 months and 13 days he prayed that the sentence of imprisonment may be suspended.

5.Heard the learned Government Advocate (Crl. Side) and perused counter affidavit.

6.Admittedly, the petitioner is aged about 70 years. The petitioner has raised several arguable points in the above appeal, which requires consideration. The appeal is not likely to be taken up in the near future. Out of the sentence of 5 years, the petitioner is in custody for 1 year and 8



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months. Considering the above facts, 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, Magalir Neethimandram (FTMC), Udthagamandalam, The Nilgiris;
- (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



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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.

31.01.2025

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Note:

- (i) High Court Legal Services Committee may pay the scheduled fee to Mr.R.Chakkaravarthy, Advocate**
- (ii) Issue order copy by 04.02.2025
Upload the order copy forthwith.**



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To

- 1.The Sessions Judge,
Magalir Neethimandram (FTMC),
Udhagamandalam, The Nilgiris.
- 2.The Inspector of Police,
All Women Police Station,
Ooty Rural, The Nilgiris District.
- 3.The Deputy Superintendent of Police,
Ooty Rural, The Nilgiris District.
- 4.The Superintendent,
Central Prison,
Coimbatore.
- 5.The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J.

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