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Crl.M.P.No.15650 of 2024
in Crl.A.No.698 of 2023

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

CRL MP NO. 15650 of 2024
in Crl.A.No.698 of 2023

Ganesan

Petitioner

Vs

State By
The Inspector of Police
AWPS, Tiruchengode Police Station
Namakkal District
(Crime No.5 of 2020)

Respondent(s)

For Petitioner(s):

Mr.P.Pugalthi

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 imposed against the petitioner on 06.02.2023 in Special C.C.No.35 of 2021, on the file of the Sessions Court, Magalir Neethi Mandram (Fast Track Mahila Court), Namakkal District and release the petitioner on bail till the disposal of the Criminal Appeal in Crl.A.No.698 of 2023.



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ORDER

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This Criminal Miscellaneous Petition has been filed under Section 430(1) of BNSS praying to suspend the sentence imposed against the petitioner on 06.02.2023 in Special C.C.No.35 of 2021, on the file of the Sessions Court, Magalir Neethi Mandram (Fast Track Mahila Court), Namakkal District and release the petitioner on bail till the disposal of the Criminal Appeal in Crl.A.No.698 of 2023.

2.The case of the prosecution is that on 30.08.2020 at about 2.00 p.m, the petitioner took the victim near a Panchayat Union Primary school's water tank; that the petitioner thereafter with sexual intent kissed on the mouth of the victim child aged about 6 years, removed her under garments and penetrated his finger in her private part and also showed his private part to the victim.

3. The petitioner/Accused in Special C.C.No.35 of 2021 was convicted by the Trial Court vide judgment dated 06.02.2023 for the offences U/s.5(m) r/w 6 of POCSO Act, 2012 and sentenced to 20 years R.I. and to pay a sum of Rs.5,000/- in default to undergo S.I. for 6 months and he was also convicted U/s.11(i) r/w 12(2 counts) of POCSO Act, 2012 and sentenced to 3 years R.I. on each count and to pay a sum of Rs.2,500/- on each count, in default to



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undergo S.I. for 6 months on each count. Aggrieved by the same, he filed Crl.A.No.698 of 2023 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 petitioner was 61 years at the time of occurrence; and that there was prior enmity between P.W.4, the father of the victim and the petitioner; that the victim's evidence is contrary to the prosecution case and that there are also several vital contradictions; that the evidence of doctor would show that the victim was not subjected to any sexual assault; that P.W.2, the sister of the victim, aged about 7 years, is stated to have witnessed the occurrence, also has given contradictory versions; and that the petitioner is in custody from 06.02.2023 and hence sentence may be suspended.

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

6.The learned Government Advocate (Crl. Side) would submit that the evidence of P.W.1, the victim inspires confidence and that she had given



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consistent version before the learned Magistrate and before the Court and that the petitioner has not made out any ground for suspension of sentence and prayed for dismissal.

7.The prosecution case rests on evidence of P.W.1, the victim and the evidence of P.W.2, her sister who was aged about 7 years. Prima facie this Court is of the view that the evidence of both P.W.1 and P.W.2 is contrary to the prosecution case. P.W.1 had stated in her cross examination that she had deposed as instructed by the police and her mother. The doctor (PW9) who had examined P.W.1 had stated that there were no external injuries on the private part or any other part of the victim's body; and opined that there was nothing to indicate that the victim was subjected to sexual assault. She had also admitted in the cross examination that the entries made by her in the certificate was based on the statements made by the victim's mother and not that of the victim. This Court has to therefore consider whether the conviction can be sustained on the evidence of the victim P.W.1 and her sister P.W.2 in the above appeal. The appeal is not likely to be taken up in the near future. The petitioner is aged about 61 years and he is in custody from 06.02.2023. Considering the above facts, this Court is inclined to suspend the sentence.



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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 Rs.10,000/-, with two sureties, each for a like sum to the satisfaction of the Session Court, Maglir Neethi Mandram (Fast Track Mahila Court) Namakkal District.
- (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



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SUNDER MOHAN, J.

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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 Session Court
Maglir Neethi Mandram
(Fast Track Mahila Court)
Namakkal Disrict.

2. The Inspector Of Police
All Women Police Station
Tiruchengode Police Station
Namakkal District

3.The Superintendent,
Central Prison
Coimbatore

4.The Public Prosecutor,
High Court, Madras.

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