



Crl.M.P.No.15549 of 2024
in Crl.A.No.1617 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2025

CORAM

THE HONOURABLE Mr.JUSTICE SUNDER MOHAN

Crl.M.P.No.15549 of 2024

IN

Crl.A.No.1617 of 2023

Muthu

.. Petitioner

Vs

State by

The Inspector of Police

All Women Police Station

Sirkazhi, Nagapattinam District

(Crime No.8/2020)

.. Respondent

Criminal Miscellaneous Petition filed under Section 430(1) of BNSS read with 389(i) Cr.P.C., to suspend the sentence of imprisonment imposed on the petitioner in Spl.S.C.No.43 of 2020 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Nagapattinam, judgment dated 19.10.2023 and enlarge the petitioner on bail, pending disposal of the criminal appeal No.1617 of 2023.

For Petitioner : Mr.A.Nagarajan

For Respondent : Dr.C.E.Pratap

Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence of imprisonment imposed on the petitioner by the learned Sessions



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Judge, Special Court for Exclusive Trial of cases under POCSO Act, Nagapattinam, by judgment dated 19.10.2023, in Spl.S.C.No.43 of 2020, pending disposal of the above criminal appeal.

2. The petitioner was convicted by the trial Court for the offences under Sections 6 read with 5(m),(l) of POCSO Act and sentenced to undergo rigorous imprisonment for twenty years and to pay a fine of Rs.20,000/-, in default to undergo simple imprisonment for one year. Since the petitioner was a child in conflict with law at the time of occurrence, the trial Court directed that he be sent to a place of safety till he attains 21 years and thereafter, he be transferred to a prison to undergo the remaining period of sentence. Aggrieved by the same, the petitioner filed Crl.A.No.1617 of 2023 before this Court along with the instant miscellaneous petition seeking suspension of sentence and bail.

3. The case of the prosecution is that the petitioner and the victim, who was aged about 7 years, were residing in the same village; that the petitioner was known to the victim; that on 28.09.2020, the petitioner took the victim to the backyard of his house, removed her undergarments and committed penetrative sexual assault and committed the said offence once again on



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03.10.2020.

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4. The learned counsel for petitioner would submit that admittedly, the petitioner was a juvenile at the time of commission of offence and the assessment that was made by the Juvenile Justice Board to try the petitioner as an adult is not in accordance with law; that in any case, the victim had made contradictory statements; that in her earlier version in the statement recorded under Section 164 Cr.P.C., the victim had not given any details and she had given exaggerated version in the Court; that the Doctor (P.W.8), who examined the victim had deposed that there was no external injury on the victim and the hymen was intact; and that the accident register would suggest there was only a complaint of sexual harassment and hence, prayed for suspension of sentence imposed on the petitioner.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent and perused the counter affidavit.

6. The learned Government Advocate (Crl. Side) opposed the grant of bail stating that the Juvenile Justice Board had given elaborate reasons for



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trying the petitioner as an adult and therefore, the trial is not vitiated and that the trial Court had considered the evidence of the victim and had convicted the petitioner, which is in accordance with law and therefore, prayed for dismissal of the petition.

7. Though this Court had earlier on 25.06.2024, dismissed the bail application filed by the petitioner in CrI.M.P.No.5846 of 2024 in CrI.A.No.1617 of 2023, this Court is of the view that it appears that the points now raised before this Court has not been placed before this Court earlier. The victim had not specified the nature of sexual assault committed, in her statement recorded under Section 164 Cr.P.C. The entries in the accident register does not also suggest that penetrative sexual assault was committed. The Doctor who had examined the victim had deposed that there was no external injury and the hymen was intact. This Court has to examine, whether the conviction can be sustained on the sole testimony of the victim in the instant appeal. The appeal is not likely to be taken up in the near future. Further, the petitioner was aged about 17 years, at the time of occurrence. Considering the above facts and the period of incarceration of the petitioner, this Court is inclined to grant the relief of suspension of sentence to the



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petitioner.

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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 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, Special Court for Exclusive Trial of cases under POCSO Act, Nagapattinam;
- (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 Aadhaar 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 the petitioner 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.

03.01.2025



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SUNDER MOHAN, J.

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To

1.The Sessions Judge

Special Court for Exclusive Trial of cases under POCSO Act

Nagapattinam

2.The Inspector of Police

All Women Police Station

Sirkazhi, Nagapattinam District

(Crime No.8/2020)

3.The Public Prosecutor

High Court, Madras

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