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Crl.M.P.No.16008 of 2024 in Crl.A.No.1170 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.16008 of 2024
in Crl.A.No.1170 of 2022

Murthy

... Petitioner

Vs.

State rep. By
The Inspector of Police,
Arni All Women Police Station,
Thiruvannamalai District.
[Crime No.04/2020]

... Respondent

PRAYER: Criminal Miscellaneous Petition is filed under Section 389(1) of Cr.P.C./Section 430 of BNSS, to suspend the execution of conviction and sentence imposed against the petitioner/appellant/sole accused in Spl.S.C.No.94 of 2020 dated 19.09.2022 by the learned Sessions Judge, Trial Court for Exclusive Trial Cases under POCSO Act, Thiruvannamalai and enlarge him on bail pending disposal of the appeal.

For Petitioner	:	Mr.R.C.Paul Kanagaraj for Mr.K.Madhan
For Respondent	:	Mr.L.Baskaran Government Advocate (Crl. Side)



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ORDER

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The petitioner/accused was convicted by the Trial Court in Spl.S.C.No.94 of 2020 by judgment dated 19.09.2022 and sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one year simple imprisonment for the offence under Section 366 of IPC, twenty years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one year simple imprisonment for the offence under Section 376AB of IPC and Section 5(m) r/w. 6 of POCSO Act, 2012 and five years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one year simple imprisonment for the offence under Section 9(m) r/w. 10 of POCSO Act. All the sentences to run concurrently. Against which, the present appeal and suspension of sentence petition filed.

2.The contention of the learned counsel for the petitioner is that PW1 is the victim in this case. On 18.03.2020 at about 3.00 p.m., PW1 went to purchase curd in the shop and when she returned back to her house, the petitioner forcibly dragged her inside the house, undressed himself and also



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the victim, thereafter attempted to commit aggravated penetrative sexual assault, bitten her lips and also rubbed her breast. PW1 informed her mother/PW2 about the incident and thereafter, PW1 was taken to Arni Government Hospital from where information was sent to the respondent Police. A Women Police Constable visited the Hospital, recorded the statement of PW2 and the same was taken as complaint (Ex.P2). PW9/Doctor who examined PW1 issued Ex.P7/Accident Register wherein it is recorded that a Women Police Constable 1473 brought the victim to the Hospital which is contrary to the complaint/Ex.P1. He would submit that in Ex.P7 the date is mentioned as 17.03.2020. He further submitted that in Ex.P8 the Doctor had given a medical certificate stating that there is no external injuries, lips swollen, vagina smear taken, no spermatazoa and hymen not intact. Further, PW9/Doctor in her evidence confirms that there is no external injuries in the private parts and the injury on the lips might be for other reasons. Further in Ex.P8, the Doctor had opined that sexual abuse could have happened as hymen not intact. The case projected against the petitioner is that the petitioner attempted to commit aggravated penetrative sexual assault, bitten the lips of the victim which got swollen and also nail



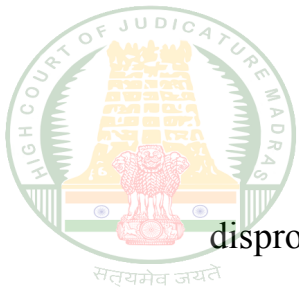
marks on her breast. But the medical report is totally contrary and there is no such nail marks in the breast or injuries in the private parts except for the swollen lips which may be due to various other reasons. Thus, in this case the foundational fact is highly doubtful.

3.The learned counsel further submitted that the victim/PW1 gave exaggerated version before the Trial Court which is gross improvement to 164 Cr.P.C statement (Ex.P1). PW2 is the mother of the victim who again gave exaggerated version, who tutored the victim/PW1 to depose against the petitioner. PW2 in her evidence stated that when she questioned her daughter/PW1, she found cut and blood wounds on her lips, breast and wound in the private part and her dress was with blood stains. PW2 gave exaggerated version that the petitioner dragged her daughter inside the house was seen by the villagers and PW2 was informed about the same. Further, PW2 states that the victim had bitten the hands of the petitioner and also states that initially she had gone to the Police Station and thereafter to the Government Hospital, Arni. PW3 is the father of the victim who on getting news, came to the house. He stated that his daughter's face and chest



was with injuries. PW4, brother of the victim stated that he along with his father/PW3, mother/PW2 and sister/PW1 had gone to the house of the petitioner, questioned him and petitioner ran away from there. Thereafter, when his sister/PW1 cried with pain, she was taken to the hospital.

4.PW9 is the Casualty Doctor attached to the Government Hospital, Vellore, who on 18.03.2020 at about 06.00 examined the victim/PW1 produced by the Women Police Constable attached to the respondent Police Station. At that time, the victim/PW1 informed that at about 03.00 p.m, a known person attempted to commit sexual assault on her. On examination, it was found that her lips was swollen and when her private part was examined, no injuries found and her hymen found not intact. Further, vaginal smear taken, no spermatozoa found and PW9 issued the Accident Register (Ex.P7) and opinion (Ex.P8) that “*sexual abuse could have happened as hymen not intact*”, but she further clarifies that hymen found not intact was not due to any immediate cause, it was over a period of time and for what reason it is not known. Hence, the case projected on 18.03.2020 the petitioner committed aggravated penetrative sexual assault is



disproved by the evidence of the Doctor (PW9) and Exs.P7 & P8. He further submitted that there is no case of aggravated penetrative sexual assault considering the evidence which the Trial Court failed to consider.

5.The learned counsel further submitted that the petitioner is a senior citizen with health ailments and extortion was attempted to be made, projecting the above case which he resisted and he is now behind the bars. The petitioner is ailing with severe health conditions, unable to perform his daily routine without the aid and support of fellow prisoners, the petitioner is regularly referred to medical treatment and the petitioner may not survive for a long period. He further submitted that the petitioner is in prison for three months as under trial prisoner and thereafter he is in prison from the date of the judgment on 19.09.2022.

6.The learned Government Advocate (Crl. Side) appearing for the respondent Police strongly objected the petitioner's contention and submitted that on 18.03.2020 at about 03.00 p.m., the victim aged about 12 years went to shop for purchasing curd and after purchasing, she returned



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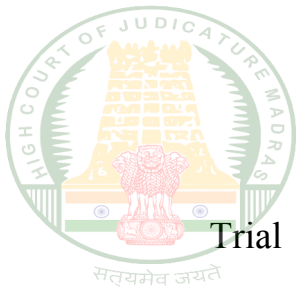
back to house, at that time, the petitioner forcibly dragged the victim's hand and taken her into his house, removed her dresses and committed aggravated penetrative sexual assault on her. Based on the complaint (Ex.P2), the respondent Police registered FIR (Ex.P10) in Crime No.4 of 2020 for offence under Sections 363, 366, 376 AB, 324 of IPC and Sections 3(a), 4, 5(i), 5(m) & 6 of Protection of Children from Sexual Offences Act, 2012 on 18.03.2020 against the petitioner and took up the case for investigation. On 19.03.2020, the respondent Police arrested the petitioner, recorded his confession statement in the presence of witnesses and then produced before the learned Judicial Magistrate, Arni and sent to remand for judicial custody. After completion of investigation, based on the statements of witnesses and material evidence, on 30.07.2020 the respondent Police altered the Section into 366, 376AB of IPC and Section 5(m), 6, 9(m) & 10 of Protection of Children from Sexual Offences Act and then filed a charge sheet against the petitioner before the Trial Court and the same was taken on file as Special S.C.No.94 of 2020. During trial, on the side of the prosecution, 12 witnesses examined PW1 to PW12 and 13 documents marked as Exs.P1 to P13. On the side of the defence, no witness examined



and no document marked.

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7.He further submitted that in this case, PW1 is the victim girl who is a minor aged about 11 years at the time of occurrence and the petitioner was residing in the same village. When the victim girl went to shop to purchase curd, the petitioner pulled her inside the house and committed aggravated penetrative sexual assault. The victim narrated the act of the petitioner inserting his private part into her private part. The victim sustained severe injury and further her lips was bitten, breast was swollen. The victim girl out of pain, ran out of the house, cried and complained to her mother/PW2. Thereafter, PW2, PW3 and PW4, mother, father and brother of the victim had gone to the house of the petitioner, questioned him and he ran away from there. Since the victim suffered serious cut and bleeding injuries, she was taken to the Government Hospital, Arni. PW9 is the Doctor examined the victim. The occurrence took place at 03.00 p.m and the Doctor/PW9 examined the victim at 06.00 p.m on the same day and recorded the injuries in Exs.P7 & P8. The victim's 164 Cr.P.C statement before the Magistrate is marked Ex.P1. The victim girl confirmed the petitioner's act before the



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Trial Court. All the witnesses in this case supported the case of the prosecution. On the evidence of the victim and her parents, the Trial Court rightly convicted the petitioner. He further submitted that the petitioner, an aged person, committed aggravated penetrative sexual assault on the victim girl aged about 11 years.

8.This Court considered the rival submissions and perused the materials available on record.

9.PW1 is the victim in this case. PW2, PW3 and PW4 are the mother, father and brother of PW1. On 18.03.2020, the victim had gone to the shop to purchase curd, at that time the petitioner pulled the victim inside the house and committed sexual assault. The victim/PW1 stated that the petitioner inserted his private part into her private part, caused pain and sufferings to her and also bitten her lips and rubbed her breast hardly. Unable to bear the pain, she ran out of the house informed her mother/PW2. PW2 stated that the daughter was unable to bear the pain, there was blood stains on her dress and she was immediately taken to the Government



Hospital, Arni. The Doctor/PW9 examined her and issued the Accident Register (Ex.P7) and opinion (Ex.P8).

10.In this case, one version is that PW2 had gone to the Police Station and thereafter to the hospital. In the hospital slip and Accident Register (Ex.P7), a Woman Police Constable 1473 from Arni All Women Police Station particulars recorded. There is some confusion with regard to whether the victim was taken to the Police Station first and thereafter to the hospital or the victim was taken to the hospital first, from there information sent to the Police Station.

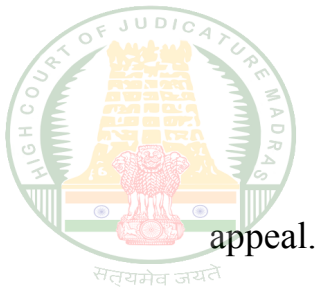
11.Be that as it may. The case projected against the petitioner is that the petitioner committed aggravated penetrative sexual assault on the victim girl and caused injuries and pain in her private part and also caused blood injuries. Added to it, injuries in the lips of the victim and on her breast. The alleged occurrence took place at 03.00 p.m and she was examined by the Doctor/PW9 at about 06.00 p.m. The Doctor/PW9 recorded the injuries sustained in the Accident Register (Ex.P7) and gave opinion (Ex.P8). From



the medical records (Exs.P7 & P8), it is seen that the lips of the victim found swollen, no external injuries on the breast and on her private parts and vaginal smear taken, no spermatozoa found, hymen not intact and gave opinion that “the sexual abuse could have happened as hymen not intact”. PW9, the Doctor in the evidence confirmed that hymen found not intact was not due to the immediate occurrence happened on 18.03.2020 and might be for various other reasons. It is not the case that the petitioner harassed the victim/PW1 continuously prior to 18.03.2020. In view of the same, hymen found not intact might for various other reasons and the petitioner is not the cause. The only injury confirmed is swelling on the lips, nothing else.

12.In view of the above, the conviction of the petitioner for aggravated penetrative sexual assault needs reconsideration.

13.Finding that the petitioner is in prison from the date of the judgment, the petitioner is suffering from severe health ailments and it will take some time for the appeal to be taken up for final hearing, this Court is inclined to grant suspension of sentence till the disposal of the criminal



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14. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and he is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties, each for a like sum to the satisfaction of the trial Court.

15. Further, the petitioner shall appear before the Trial Court on the first working day of once in three months at 10.30 a.m. until the disposal of the criminal appeal. If the petitioner is not able to appear before the Trial Court on that 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. Accordingly, this Miscellaneous Petition is ordered.

07.04.2025

Speaking Order/Non Speaking Order

Index : Yes/No

Internet : Yes/No

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- To
- 1.The Sessions Judge,
Special Court (POCSO Act Cases),
Tiruvannamalai.
 - 2.The Inspector of Police,
Arni All Women Police Station,
Thiruvannamalai District.
 - 3.The Superintendent,
Central Prison, Vellore-2.
 - 4.The Public Prosecutor,
High Court, Madras.

Note: Issue Order Copy on 08.04.2025.



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M.NIRMAL KUMAR, J.

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