



*Crl.M.P.No.16624 of 2024
in Crl.A.No.1479 of 2024*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2025

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.16624 of 2024

in

Crl.A.No.1479 of 2024

Vigneshwaran

...Petitioner /Appellant

Vs.

State rep by
The Inspector of Police,
Pothanur Police Station,
Coimbatore City.
(Cr.No.828 of 2020)

... Respondent / Complainant

Prayer: Criminal Miscellaneous Petition has been filed under Section 430 of the Bharatiya Nagarik Suraksha Sanhita praying to suspend the sentence imposed on the petitioner in Spl.C.C.No.74 of 2020 passed by the learned Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore by an order dated 11.03.2024 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.



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For Petitioner : Mr.S.Ilamuhil

For Respondent : Dr.C.E.Pratap
Government Advocate (Crl.Side)

ORDER

The Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in Spl.C.C.No.74 of 2020 passed by the learned Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore by an order dated 11.03.2024 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

2. The case of the prosecution is that a complaint was lodged by the mother of the victim girl that her daughter/victim went missing on 16.05.2020 at about 20.15 hours; and that the victim was in constant touch with the petitioner and subsequently, the victim was traced 4 days thereafter and the defacto complainant came to know that the petitioner had taken the victim and had sexual intercourse on the promise of marriage.



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3. The petitioner/accused in Spl.C.C.No.74 of 2020 was convicted by the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore for the offences under Section 5(1) r/w Section 6 of POCSO Act & 376 (3) of IPC and sentenced to undergo 20 years of rigorous imprisonment with fine of Rs.10,000/- for the offences and in default to undergo 1 years simple imprisonment and for the offence under Section 363 of IPC, he was sentenced to undergo 5 years of rigorous imprisonment with fine of Rs.5,000/- for the offences, in default to undergo 6 months simple imprisonment. Challenging the said order, the petitioner/accused filed Crl.A.No.1479 of 2024 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 admittedly, the victim and the petitioner had a love affair; and that the petitioner was aged 23 years at the time of occurrence that the victim had not stated about the alleged sexual intercourse in her statement recorded before the learned Magistrate under Section 164 Cr.P.C and the evidence of the doctor, P.W.12 would show that the victim was not subjected to forcible sexual intercourse; and that the petitioner is in custody from 11.03.2024 and was in custody for 2



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months during the period of investigation and prayed for granting suspension of sentence to the petitioner.

5. Heard the learned counsel for the learned Government Advocate (Crl.Side) for the respondent and perused the records, including the counter affidavit.

6. The learned Government Advocate (Crl.Side), per contra, submitted that though the victim had not accused the petitioner of committing of penetrative sexual assault in her statement recorded under Section 164 Cr.P.C., there is no reason to disbelieve her testimony and hence, the petitioner has not made out any ground for suspension of sentence.

7. It is not in dispute that the petitioner and the victim had a love affair. The victim had also not accused the petitioner of commission of penetrative sexual assault in her statement recorded under Section 164 Cr.P.C. The doctor had opined that the victim was not subjected to forcible sexual intercourse. Therefore, it appears to be a case of biological attraction and mutual innocence of the petitioner and the victim. This Court has to examine in the



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above appeal 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 facts and the period of incarceration undergone by the petitioner, this Court is inclined to grant suspension of sentence to the petitioner till the disposal of the above Appeal and the petitioner is ordered to be released on bail on the following conditions :

(i) The sentence of imprisonment alone, imposed on the petitioner/accused shall be suspended, on him executing a bond for a sum of Rs.10,000/- with two sureties, each for a likesum to the satisfaction of the learned Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore.

(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;

(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



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SUNDER MOHAN, J.
Anu

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.

9. Accordingly, the Criminal Miscellaneous Petition is ordered.

30.01.2025
(2/2)

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Issue order copy by 31.01.2025
Upload the order copy forthwith.

To

1.The Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore.

2.The Superintendent,
Central Prison, Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

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