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*Crl.M.P.No.16716 of 2024
in Crl.A.No.1483 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.16716 of 2024

in

Crl.A.No.1483 of 2024

Ranjith

... Petitioner / Accused

Vs.

State rep by
The Inspector of Police,
Nettapakkam Police Station,
Puducherry.
(Cr.No.34 of 2021)

... Respondent / Complainant

Prayer: Criminal Miscellaneous Petition has been filed under Section 483 & 430 of the Bharatiya Nagarik Suraksha Sanhita praying to suspend the sentence imposed by the learned Sessions Judge, Fast Track Court to Exclusively deal with offences under POCSO Act, Puducherry, by a judgement dated 24.10.2024 in Spl.S.C.No.74 of 2023 and enlarge the petitioner on bail pending disposal of the above appeal.

For Petitioner : Mr.P.Parthipan

For Respondent : Mr.A.V.Ramachandramurthy
Additional Public Prosecutor
Puducherry



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ORDER

The Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the learned Sessions Judge, Fast Track Court to Exclusively deal with offences under POCSO Act, Puducherry, by a judgement dated 24.10.2024 in Spl.S.C.No.74 of 2023 and enlarge the petitioner on bail pending disposal of the above appeal.

2. The case of the prosecution is that the petitioner and the victim girl were neighbours; that on 01.05.2021 at about 12.30 p.m., the petitioner took the victim girl inside his house, while she was playing near his house, closed the door and had committed penetrative sexual assault by inserting his penis into her private part.

3. The petitioner/accused in Spl.S.C.No.74 of 2023 was convicted by the learned Sessions Judge, Fast Track Court to Exclusively deal with offences under POCSO Act, Puducherry for the offences under Section 6 of POCSO Act and sentenced to undergo rigorous imprisonment for 20 years with fine of Rs.10,000/- in default of payment of fine, simple imprisonment for 2 months



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and for the offence under Section 363 IPC and sentenced to undergo rigorous imprisonment for 3 years with fine of Rs.1,000/-, in default of payment of fine, to undergo simple imprisonment for 1 month and for the offence under Section 342 IPC, he was sentenced to undergo rigorous imprisonment for 1 year with fine of Rs.1,000/-, in default of payment of fine, to undergo simple imprisonment for 1 month. Challenging the said order, the petitioner/accused filed Crl.A.No.1483 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 the conviction by the trial Court cannot be sustained; that P.W.1, the mother of the victim, P.W.2, the victim and P.W.3, the father of the victim turned hostile; and that the evidence of the doctor would show that the victim was not subjected to any sexual assault and there were no injuries on the private part of the victim; and that therefore, the petitioner is innocent and entitled for suspension of sentence.

5. Heard the learned counsel for the learned Additional Public Prosecutor (Puducherry) for the respondent and perused the records, including



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the counter affidavit filed by the respondent.

6. The learned Additional Public Prosecutor (Puducherry), per contra, submitted that though it is a fact that P.W.1 to P.W.3 had turned hostile, the evidence of the doctor, P.W.13 would show that the victim's mother, P.W.1 had informed the doctor about the occurrence and that the victim had also made a statement to the learned Magistrate recorded under Section 164 Cr.P.C and therefore, merely because the victim had turned hostile, the judgement cannot be faulted.

7. It is seen that the victim had given a statement before the learned Magistrate under Section 164 Cr.P.C. However, since she did not support the prosecution case in her deposition, she was treated hostile. She did not identify the petitioner. The mother and father of the victim, who were examined as P.W.1 and P.W.3 also turned hostile. Though the doctor had recorded the statement of the victim's mother in the medical examination certificate, he had deposed that there were no external injuries on the victim and there was no evidence of recent physical genital injuries or evidence of forcible sexual intercourse.



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8. In the light of the above infirmities, it has to be examined whether the conviction can be sustained based on the above evidence. The appeal is not likely to be taken up in the near future. Hence, 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 Sessions Judge, Fast Track Court to Exclusively deal with offences under POCSO Act, Puducherry.

(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)

Anu

Issue order copy by 31.01.2025
Upload the order copy forthwith.

To

1.The Sessions Judge, Fast Track Court to Exclusively deal with offences under POCSO Act, Puducherry

2.The Superintendent,
Central Prison, Puducherry.

3.The Inspector of Police,
Nettapakkam Police Station,
Puducherry.

4.The Public Prosecutor,
High Court, Madras.

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