



WEB COPY



Crl.M.P.No.18098 of 2024 in Crl.A.No.1614 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2025

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.18098 of 2024
in Crl.A.No.1614 of 2024

Karthik

... Petitioner/Accused

Vs.

State of Rep. by its
The Inspector of Police,
Mettupalayam Police Station,
Coimbatore.
(Cr.No.176/2019)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 430 of BNSS, to suspend the sentence imposed on the petitioner in Spl.C.C.No.93 of 2019, passed by the learned Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Coimbatore, by an order dated 03.08.2021 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

For Petitioner : Mr.S.Silambuselvan
For Respondent : Dr.C.E.Pratap
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed seeking to



WEB COPY

suspend the sentence imposed on the petitioner/accused by judgment and order dated 03.08.2021 passed in Spl.C.C.No.93 of 2019 on the file of the learned Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Coimbatore and to enlarge the petitioner on bail pending disposal of the appeal.

2. The case of the prosecution is that the petitioner and the victim were known to each other and had a love affair; that on the promise to marry the victim, the petitioner took the victim to his friend's house, forcibly tied thalli and thereafter committed penetrative sexual assault continuously; and that the case was registered initially for 'girl missing' and was subsequently, altered to the offence under Section 366 IPC and Sections 5(l) r/w 6 of POCSO Act, 2012 and 9 of the POCSO Child Marriage Act.

3. The petitioner was convicted and sentenced by the trial Court as follows:

Offence under Section	Sentence imposed
366 IPC	To undergo RI for ten years and to pay a fine of Rs.10,000/-, in default to undergo RI for two years.



WEB COPY

9 Child Marriage Act	To undergo RI for two years and to pay a fine of Rs.10,000/-, in default to undergo RI for six months.
5(l) r/w 6 POCSO Act.	To undergo RI for twenty years and to pay a fine of Rs.10,000/-, in default to undergo RI for two years.

4. Heard Mr.S.Silambuselvan, learned counsel for the petitioner and Dr.C.E.Pratap, learned Government Advocate (Crl.Side) appearing for the respondent/State.

5. The learned counsel appearing for the petitioner would submit that even accordingly to the prosecution, it is a case of love affair; that the victim was aged 17 years and the conviction is based on the sole testimony of the victim, which has to be tested by this Court in the instant appeal; and that the petitioner is in custody from 03.08.2021 for nearly 3 years and 5 months and therefore, prayed for suspension of sentence.

6. The learned Government Advocate (Crl.Side) *per contra* would submit that the evidence of the victim is cogent and convincing and the consent is immaterial and therefore prayed for dismissal of the petition.



WEB COPY



Crl.M.P.No.18098 of 2024 in Crl.A.No.1614 of 2024



7. Considered the submissions made on either side and perused the materials available on record.

8. Admittedly, the petitioner was aged 20 years at the time of occurrence and the victim was aged 17 years and there was a love affair between the petitioner and the victim. Even if the prosecution case is accepted to be true, it appears to be a case of biological attraction and the occurrence has taken place due to mutual innocence of the petitioner and the victim. In such circumstances, it has to be examined whether the conviction can be based on the sole testimony of the victim, in the above appeal.

9. Therefore, considering the above and the fact that the petitioner is in custody from 03.08.2021 till date and also the fact that the appeal is not likely to be taken up in the near future, this Court is inclined to grant the relief of suspension of sentence to the petitioner.

10. Accordingly, this criminal miscellaneous petition stands **allowed**. The sentence imposed on the petitioner is suspended and the petitioner is ordered to be released on bail on the following conditions:



WEB COPY



Crl.M.P.No.18098 of 2024 in Crl.A.No.1614 of 2024

- (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, 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; 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 other day in lieu of the date of his absence, as directed by the trial Court.

09.01.2025

ars

Issue order copy by 10.01.2025.

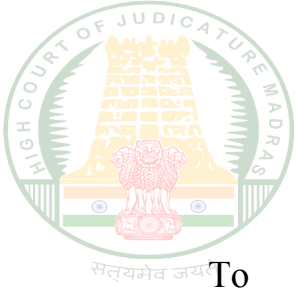
Upload the order copy today.



WEB COPY



Crl.M.P.No.18098 of 2024 in Crl.A.No.1614 of 2024



Crl.M.P.No.18098 of 2024 in Crl.A.No.1614 of 2024

To
WEB COPY

1. The Sessions Judge,
Special Court for exclusive trial of cases under POCSO Act,
Coimbatore.
2. The Inspector of Police,
Mettupalayam Police Station,
Coimbatore.
3. The Superintendent of Prisons,
Central Prison, Coimbatore.
4. The Public Prosecutor,
Madras High Court.



WEB COPY



Crl.M.P.No.18098 of 2024 in Crl.A.No.1614 of 2024

SUNDER MOHAN, J.

ars

Crl.M.P.No.18098 of 2024
in Crl.A.No.1614 of 2024

09.01.2025