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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2022

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.M.P.No.147 of 2022

in Crl.A.No.6 of 2022

Anbu

.. Petitioner/A1

Vs.

State through its
The Inspector of Police,
All Women Police Station,
Jayankondam,
Ariyalur District.
(Crime No.20 of 2017)

.. Respondent/Respondent

Criminal Miscellaneous Petition filed under Section 389(1) and 439 of Cr.P.C. to suspend the sentence passed in Spl.S.C.No.4 of 2018 dated 11.11.2021, on the file of the learned Sessions Judge, Fast Track Mahila Court, Ariyalur.

For Petitioner : Mr.R.Vivekananthan

For Respondent: Mr.Leonard Arul Joseph Sevam
Government Advocate (Crl.Side)

O R D E R

This criminal miscellaneous petition has been preferred by the petitioner/A1 seeking to suspend the sentence imposed upon him, by judgment and order dated 11.11.2021 passed in Spl.S.C.No.4 of 2018 on the file of the learned Sessions Judge, Fast Track Mahila Court, Ariyalur and to enlarge him on bail, pending disposal of the appeal.

2. The petitioner, who is arrayed as A1 in Spl.S.C.No.4 of 2018 on the file of the learned Sessions Judge, Fast Track Mahila Court, Ariyalur, by judgment dated 11.11.2021, was convicted for offence under Section 6 of POCSO Act, 2012, Sections 417 and 376(2)(i),(n) of IPC and sentenced as follows:



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Offence under Section	Sentence
6 of POCSO Act	Undergo ten years rigorous imprisonment and to pay a fine of Rs.10,000/- in default, to undergo one year simple imprisonment
376(2) (i), (n) of IPC	Undergo ten years rigorous imprisonment and to pay a fine of Rs.5,000/- in default, to undergo one year simple imprisonment
417 of IPC	Undergo one years rigorous imprisonment and to pay a fine of Rs.1,000/- in default, to undergo one month simple imprisonment

The aforesaid sentences were ordered to run concurrently.

3. Challenging the above conviction and sentences, the petitioner/A1 has filed Crl.A.No.6 of 2022 along with the instant miscellaneous petition, seeking suspension of sentence and bail.

4. The case of the prosecution is that on 01.01.2014, around 11.00am while at the time the petitioner/A1 and the victim child were chatting with each other in Irumbulikurichi, the petitioner/A1 compelled the victim child for physical relationship. Further, after threatening the victim child that only if she agree for physical relationship, he would make arrangement for their marriage, the petitioner/A1 had physical relationship with the victim child. Later, in the same way, on many occasions and at various places, after making false assurance as to marry her, compelled the victim child and committed penetrative sexual assault. Hence, a case has been registered as against this petitioner and two others in Crime No.20 of 2017, on the file of the All Women Police Station, Jayankondam. Thereafter, the trial Court framed the charge for offence under Section 6 of Protection of Children from Sexual Offences Act, 2012 and afterwards, charges for offence under Sections 417 and 376(2) (i), (n) of IPC, were also framed.

5. The learned counsel appearing for the petitioner/A1 would submit that while at the time of alleged occurrence, both the petitioner/A1 and the victim child have not completed the age of 16. The trial Court without determining the age of the petitioner/A1, continued the trial by following the procedure laid down in Chapter XVIII of Cr.P.C., and after completing the trial, convicted the petitioner/A1, as above. Therefore, the procedure adopted by the Court below is an erroneous one and it is a fit case for de nova trial. According to the learned counsel, detaining the petitioner/A1 in the judicial custody is unnecessary and accordingly, suspension of sentence will have to be granted to the petitioner herein.



6. Mr. Leonard Arul Joseph Selvam, the learned Government Advocate (Crl. Side) appearing for the State submitted that conviction has been rendered placing reliance upon the evidence given by the witnesses, who have known the occurrence. He would further submit that before the trial Court, in respect to the age of the victim child and the petitioner/A1, nobody has raised objection and therefore, it would not be necessary to determine the age of the accused at this state. According to him, this petition requires to be dismissed.

7. Heard Mr. R. Vivekananthan, learned counsel appearing for the petitioner/A1 and Mr. Leonard Arul Joseph Selvam, learned Government Advocate (Crl. Side), appearing for the respondent/State.

8. Now, on going through the charges levelled by the trial Court, it was stated that the alleged occurrence had happened on 01.01.2014. In the said occasion, on perusal of the Higher Secondary Examination marksheet issued to the petitioner/A1, the date of birth of the petitioner/A1, was mentioned as 10.06.1998. Further, by confirming the same, the Head Master of CSI Hr. Sec. School, Mahimaipuram, Jayankondam, Ariyaur, has issued a certificate dated 29.03.2022, wherein he had confirmed that the date of birth of the petitioner/A1 as 10.06.1998.

9. On the other hand, one Senthamizh Selvi, who is the Headmistress in Irumbulikurichi Government Primary School, while at the time of giving evidence as PW12 before the trial Court, produced a copy of the Transfer Certificate, pertains to the victim child and gave evidence as the victim child was born on 24.05.1998.

10. Therefore, by calculating the date of birth with the date of occurrence, it seems, while at the time of occurrence, both the victim child and the petitioner/A1, have not completed the age of 16. Hence, in the present appeal, it would be necessary to verify whether the procedure adopted by the trial Court for disposing the case, is in accordance with the correct provision or not. Further, in a case of Ashok Vs. The State of Madhya Pradesh, by judgment dated 14.11.2017, our Hon'ble Apex Court has held as follows:

"The claim of juvenility can thus be raised before any Court, at any stage, even after final disposal of the case and if the Court finds a person to be a juvenile on the date of commission of the offence, it is to forward the juvenile to the Board for passing appropriate orders, and the sentence, if any, passed by a Court, shall be deemed to have no effect."

11. Thus, considering the above facts, especially the age of the victim child and the petitioner/A1, as stated supra, and also as the appeal is not likely to be taken up in the near future, this Court is of the view that the petitioner/A1 is entitled to the relief of suspension of sentence and bail.



4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

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+1 C.C. to MR.R.VIVEKANANTHAN Advocate on payment of necessary
charges SR.NO. 4803

Order

in
CRL MP.147/2022

in
CRL A.6/2022

Date :30/03/2022

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RW 01/04/2022