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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2022

CORAM:

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

Crl.M.P.No.632 of 2022

in

Crl.A.No.42 of 2022

Sathish Kumar

... Petitioner

Vs.

The Inspector of Police  
All Women's Police Station,  
Cuddalore Main Road, Virudhachalam,  
Cuddalore District - 606 001.  
(Crime No.11 of 2016)

... Respondent

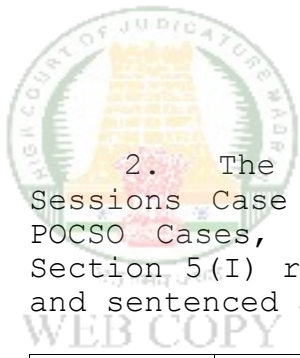
PRAYER: Criminal Miscellaneous Petition has been filed under Section 389 (1) r/w.439 of Cr.P.C to enlarge the petitioner/appellant on bail by suspending the sentence imposed on the petitioner/appellant by the learned Special Judge for POCSO Cases, Cuddalore in Spl.S.C.No.93 of 2019 dated 30.09.2021 pending disposal of the above appeal.

For Petitioner : Mr.Sundar Mohan  
for Mr.Manuraj

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

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner/Accused No.1, seeking suspension of sentence of imprisonment imposed by the learned Special Judge for POCSO Cases, Cuddalore by the judgment dated 30.09.2021 in Special Sessions Case No.93 of 2019 and enlarge the petitioner/appellant on bail pending disposal of the above Criminal Appeal.



2. The petitioner/appellant herein is the accused No.1 in Sessions Case No.93 of 2019 on the file of the Special Court for POCSO Cases, Cuddalore. He was found guilty of the offence under Section 5(I) r/w. Section 6 of the POCSO Act and he has been convicted and sentenced as under:

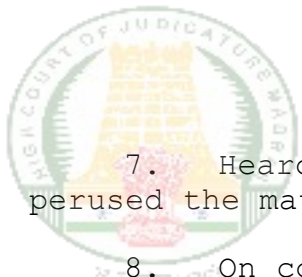
| S.No. | Conviction                                  | Sentence                                                                                                 |
|-------|---------------------------------------------|----------------------------------------------------------------------------------------------------------|
| 1.    | Section 5(I) r/w. Section 6 POCSO Act, 2012 | 10 years Rigorous Imprisonment and fine of Rs.2,000/- in default to undergo 3 months Simple Imprisonment |

3. Challenging the above conviction and sentence, the petitioner/accused has filed CrI.A.No.42 of 2022 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. The case of the prosecution is that the defacto complainant (PW1) and the petitioner knew each other and they had a friendly relationship with each other. Later, when the relatives of the defacto complainant came to know about this friendship, they reprimanded her and therefore she attempted to commit suicide. Thereafter, a mediation was done, whereby, the petitioner agreed to marry the defacto complainant. On 15.06.2013, when the defacto complainant was alone in her grand mother's house, the petitioner had sexual intercourse with her by giving false promise as he will marry her. Thereafter, they continued their physical relationship. Later, when the defacto complainant came to know that the petitioner is attempted to marry another girl, her relatives went to the petitioner's house at Dheevalur, wherein the relatives of the petitioner had attacked the defacto complainant and her relatives, further they abused with filthy language. Hence, a case was registered against the petitioner/accused and six others.

5. Learned counsel for the petitioner/accused submitted that there are arguable points available in the Criminal Appeal and the petitioner/accused has got a fair chance of succeeding in the Criminal Appeal and hence, the substantive sentence imposed against the Petitioner/Accused may be suspended and the petitioner may be enlarged on bail pending disposal of the above Criminal Appeal.

6. Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent/State raised serious objection for allowing this petition. Further, he would contend that the evidences recorded from the prosecution witnesses would prove the case of the prosecution beyond reasonable doubt. According to him, interference of this Court is not necessary in the findings arrived at by the trial Court.



7. Heard the learned counsels appearing on either side and also perused the materials placed on record.

8. On considering the submissions made by the learned counsels, it would appear that at the time of examining the victim girl, she reported her age as 21 years old. Further, while at the time of filing the charge sheet, the respondent police stated the age of the victim girl as 20 years old. Further, in the complaint also it was stated that the victim girl is 21 years old. In the said circumstances, only during the time, when the victim girl was examined as witness before the trial Court, she changed her submission and stated that she has not attained majority at the time of alleged occurrence. Hence, the trial Court altered the section of Law as the accused has committed an offence under the provisions of POCSO Act also. More than that in respect of Section 376 I.P.C., the victim girl has stated before the trial Court that the said occurrence had happened with her consent. Accordingly, there are arguable points available in the Criminal Appeal, further the petitioner is in judicial custody from 30.09.2021.

9. Accordingly, considering the facts and circumstances of the case and also considering the submissions of the learned counsel for the petitioner, this Court is of the view that the substantive sentence of imprisonment alone can be suspended on certain conditions. Accordingly, till the disposal of the Criminal Appeal, the reliefs of suspension of sentence and bail is granted on the following conditions:

(a) The petitioner/accused is ordered to be released on bail, on executing a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Special Judge, Special Court for POCSO Cases, Cuddalore.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioner shall appear before the Trial Court on the first working day of every English Calendar 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.



With the above directions, this Criminal Miscellaneous Petition is ordered.

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-sd/-  
01/03/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)  
High Court, Madras - 600 104.

TO

1 THE SPEICAL JUDGE,  
SPEICAL COURT FOR POCSO CASES, CUDDALORE.

2 THE INSPECTOR OF POLICE,  
ALL WOMENS POLICE STATION,  
CUDDALORE MAIN ROAD, VIRUDHACHALAM,  
CUDDALORE DISTRICT-606 001

3 THE SUPERINTENDENT,  
CENTRAL PRISON, CUDDALORE.

4 THE PUBLIC PROSECUTOR  
HIGH COURT, MADRAS.

+1 C.C. to M/S. MANURAJ Advocate on payment of necessary charges  
SR.NO.3161

Order  
in  
CRL MP.632/2022  
in  
CRL A.42/2022

Date :01/03/2022

From 7.2.2001 the Registry is issuing certified  
copies of the BAIL/Anti.BAIL Orders in this format

JPA 04/03/2022