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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2022

CORAM:

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

Crl.M.P.No.917 of 2022

in

Crl.A.No.71 of 2022

Nagamuthu (Pechi)

...

Petitioner

Vs.

The Inspector of Police
Podhanur Police Station
Coimbatore,
(Crime No.551 of 2019)

...

Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389 (2) of Cr.P.C to suspend the sentence of rigorous imprisonment of twenty years u/s 5(1)(j)(ii) r/w 6 of POCSO Act by the judgment dated 29.11.2021 in special calendar case 47 of 2020 on the file of the special Court for exclusive trial of cases under POCSO Act, Coimbatore and enlarge the appellant/Accused on bail pending disposal of the above criminal appeal.

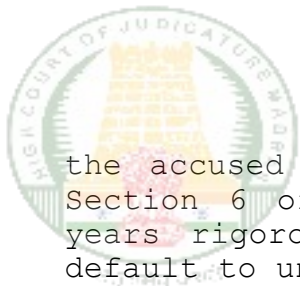
For Petitioner : Mr.T.N.Muralimoghan

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

O R D E R

This Criminal Miscellaneous Petition has been preferred by the petitioner/accused to suspend the sentence imposed upon him by judgment dated 29.11.2021 passed in Special C.C.No.47 of 2020 on the file of the Special Court For Exclusive Trial of Cases Under POCSO Act, Coimbatore and to enlarge him on bail pending disposal of the above appeal.

2.The petitioner is an accused in Special C.C.No.47 of 2020 on the file of the Special Court For Exclusive Trial of Cases Under POCSO Act, Coimbatore. By judgment dated 29.11.2021, the learned Special Judge For Exclusive Trial of Cases Under POCSO Act, found



the accused guilty for the offences under Sections 5(1)(j)(ii) r/w Section 6 of POCSO Act, 2012 and sentenced him to undergo twenty years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo Two years Rigorous Imprisonment.

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3.Challenging the above conviction and sentence, the petitioner has filed a Criminal Appeal No.71 of 2022 along with instant miscellaneous petition seeking suspension of sentence and bail.

4.The case of the prosecution is as follows:

On 15.08.2018, when the victim child was alone in her house at about 2.00 p.m., the accused came there and after undressing the victim child, made assurance that he will marry her, committed the penetrative sexual assault. Later, the same has been continued for several times. Resultantly, the victim child became pregnant and after came to know that there was change in the body of the victim child, her mother, after knowing the entire occurrence through the victim child, lodged a complaint before the respondent police alleging that the accused committed penetrative sexual assault. After receipt of the complaint, the respondent police registered a case in Crime No.551 of 2019 as against the petitioner for the offence punishable under Sections 506(i) IPC and 75(1)(c) of Tamil Nadu City Police Act and Section 9 of Prohibition of Child Marriage Act and 5(i)(j)(ii) r/w 6 of POCSO Act and after trial, he was convicted and sentenced as above.

5.The learned counsel appearing for the petitioner would submit that during the time, when the case was pending before the trial Court, the petitioner married the victim child and the same has also been registered before the competent Sub Registrar Office. Further, the petitioner is in incarceration from the date of the judgment i.e.on 29.11.2021. In the said circumstances, if the petitioner continues to be in prison, the victim child would be put to much hardship. Therefore, the suspension of sentence will have to be granted.

6.Mr.Leonard Arul Joseph Selvam, learned Govt.Advocate (Criminal Side) appearing for the respondent police would submit that since the offence committed by the petitioner is a heinous one, it would not be necessary to suspend the sentence imposed upon him. However, he admits, after the occurrence, particularly, after attaining majority by the victim child, marriage was solemnized between the petitioner and the victim child.

7.Submissions made by Mr.T.N.Muralimoghan, learned counsel appearing for the petitioner and Mr.Leonard Arul Joseph Selvam, learned Govt.Advocate (Criminal Side) appearing for the respondent police are considered.



8.The copy of the marriage certificate was placed before this Court for verification. The said certificate reveals the fact that on 10.09.2021, when the case was pending decision before the trial Court, the marriage between the victim child and the accused was solemnized in Pechiyamman Thirukovil, Vellalore, Tamil Nadu. Further, it is not in dispute, as of now, the victim child gave birth to one female child and the said child is in her custody. In the said circumstances, the question of abscondance does not arise.

9.This Court, after considering the above aspect and in view of the fact that there are substantial issues to be considered in the appeal and considering the period of incarceration, is inclined to suspend the substantive sentence of imprisonment alone on certain conditions. Accordingly, till the disposal of the Criminal Appeal, the relief 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 VII Metropolitan Magistrate Court, Coimbatore.

(b) The petitioner 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.

-sd/-
24/03/2022

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 SPECIAL COURT FOR
EXCLUSIVE TRIAL OF CASES UNDER POCSO ACT,
COIMBATORE.

2 THE METROPOLITAN MAGISTRATE,
NO.VII, COIMBATORE.

3 THE CHIEF JUDICIAL MAGISTRATE
COIMBATORE. [FOR INFORMATION]

4 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

5 THE INSPECTOR OF POLICE
PODHANUR POLICE STATION,
COIMBATORE.

6 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 C.C. to M/S.T.N.MURALIMOCHAN Advocate on payment of necessary
charges SR.NO. 4474

Order

in
CRL MP.917/2022

in
CRL A.71/2022

Date :24/03/2022

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

RW 25/03/2022