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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.M.P.No.1247 of 2022

in Crl.A.No.92 of 2022

Chinnadurai

... Petitioner

Versus

State represented by
Inspector of Police,
Thittakudi Police Station,
Cuddalore District,
Crime No.63 of 2019

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure to suspend the sentence imposed against the petitioner in Spl.S.C.No.84 of 2019 on 15.09.2021, by the learned Sessions Judge, Special Court for Exclusive Trial Cases under POCSO Act, Cuddalore and enlarge the petitioner on bail pending disposal of the above appeal.

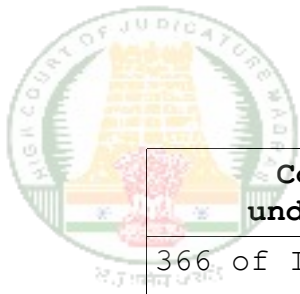
For Petitioner : Mr.S.Saravana Kumar

For Respondent : R.Vinoth Kumar
Govt. Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition is to suspend the sentence imposed on the petitioner by the judgment, dated 15.09.2021 made in Spl.S.C.No.84 of 2019 on the file of the learned Sessions Judge, Special Court for Exclusive Trial Cases under POCSO Act, Cuddalore, pending disposal of the above appeal.

2. The trial Court, by a judgment dated 15.09.2021, acquitted A2 to A4 and convicted the petitioner/A1 and sentenced him as under:



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Conviction under Section	Sentence
366 of IPC	Rigorous imprisonment for ten years and to pay a fine of Rs.2,000/-, in default, to undergo Simple imprisonment for three months.
5(1) r/w. 6 of POCSO Act 2012 r/w. 376(3) of IPC	Rigorous imprisonment for twenty years and to pay a fine of Rs.2,000/-, in default, to undergo Simple imprisonment for three months.

The Trial Court ordered the sentences to run concurrently.

3. Challenging the above said conviction and sentence, the present appeal has been filed along with this petition for suspension of sentence.

4. The learned Counsel for the petitioner would submit that a perusal of the evidence of P.W.2, it would be clear that there was a love affair and pursuant to the love affair, they had eloped and also had consensual physical relationship on several occasions. He would submit that in that background, the physical relationship pursuant to the elopement has to be considered as an offence under POCSO Act is the question to be decided by this Court while considering the appeal and therefore, there is a prima facie case and hence, prays suspension of his sentence.

5. Per contra, the learned Government Advocate(crl. side) would submit that this is a case, where the victim girl was studying only 10th standard, aged about 15 years at the time of occurrence and she was subjected to aggravated sexual assault and therefore, the Trial Court has rightly convicted the petitioner and opposed the prayer of grant of suspension of sentence.

6. I have considered the rival submissions made on behalf of both sides and went through the material records of the case.

7. Considering the allegations of the case, which is in the nature of a love affair, and considering the age of the victim, being 15 years and the accused, being 22 years, at the time of the occurrence, and the accused is under incarceration from the date of judgment i.e., 15.09.2021, and also considering the various grounds raised in the appeal regarding making out of a prima facie case, I am inclined to suspend the sentence and grant bail to the petitioner on the following conditions:-



(a) the petitioner is ordered to be released on bail, on his 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 Trial Court;

WEB COPY (b) the petitioner and the sureties shall affix their photographs and left thumb impressions in the surety bonds and the learned Judge may obtain a copy of their Aadhar 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 Criminal 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 of 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.

8. This Criminal Miscellaneous Petition is ordered accordingly.

-sd/-
14/06/2022

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 SESSIONS JUDGE
SPECIAL COURT FOR EXCLUSIVE TRIAL CASES
UNDER POCSO ACT, CUDDALORE.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
THITTAKUDI POLICE STATION,
CUDDALORE DISTRICT.



4 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

+1 C.C. to M/S.S.SARAVANA KUMAR Advocate on payment of necessary
charges SR.NO.9029

Order

in
CRL MP.1247/2022
in
CRL A.92/2022

Date :14/06/2022

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TA-15/06/2022