



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Cr1.M.P.No.3518 of 2022

in Cr1.A.No.98 of 2022

Damodharan

...

Petitioner /
Accused

versus

State represented by its
Inspector of Police,
W6, Ayanavaram All Women Police Station,
Chennai - 600 023.
(Crime No.9 of 2015)

...

Respondent /
Complainant

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389 (1) of Cr.P.C., praying to suspend the sentence imposed by the judgment dated 15.11.2018 in Sessions Case No.226 of 2016 on the file of the learned Sessions Judge, Special Court for Cases under POCSO Act / Magalir Neethimandram, Chennai and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.T.Shanmuga Boopathi

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Cr1.Side)

ORDER

This Criminal Miscellaneous Petition has been preferred by the petitioner/accused, seeking to suspend the sentence imposed upon him, by judgment and order dated 15.11.2018 passed in Sessions Case No.226 of 2016 on the file of the Sessions Judge, Special Court for Cases under POCSO Act / Magalir Neethimandram, Chennai and to enlarge him on bail, pending disposal of the appeal.

2. The petitioner, who is the accused in Sessions Case No.226 of 2016 on the file of the Sessions Judge, Special Court for Cases under POCSO Act / Magalir Neethimandram, Chennai. He was found guilty for an offence under Section 10 of the Protection of Children from



Sexual Offences Act, 2012 and he has been convicted and sentenced as under:

Offence	Sentence
Section 10 of POCSO Act	Simple Imprisonment for 5 years along with fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for 6 months

3. Challenging the above conviction and sentence, the petitioner/accused, has filed Crl.A.No.98 of 2022 along with the instant Miscellaneous Petition, seeking suspension of sentence and bail.

4. The case of the prosecution is that, on 18.12.2015, when the victim child was playing at the terrace, the petitioner sexually assaulted her, who is aged about 6 years. Therefore, the respondent police registered a case against the petitioner/accused for the offence punishable under Section 8 of POCSO Act, 2012.

5. According to the learned counsel for the petitioner, there are arguable points available in this appeal and the petitioner has got a fair chance of succeeding in this appeal and hence, the substantive sentence imposed against the petitioner may be suspended before the trial Court.

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 Mr.T.Shanmuga Boopathi, learned counsel appearing for the petitioner/accused and Mr.Leonard Arul Joseph Selvam, learned Government Advocate (Crl. Side), appearing for the respondent/State and also perused the materials placed on record.

8. Submissions made by the learned counsel appearing on either side are considered. The evidence given by P.W.1 in respect to the alleged occurrence needs a detailed appraisal. Further, whether the alleged offence committed by the petitioner is with the consent of the victim child or not also needs a detailed appraisal. Here, it is a case, the appeal is not likely to be taken up in the near future. Further, the petitioner is in incarceration from 15.11.2018. In such a view of the matter, this Court is of the view that the petitioner/accused is entitled to the relief of suspension of sentence and bail.



9. Accordingly, sentence of imprisonment alone is suspended and bail is granted to the petitioner on the following conditions:

(a) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for Cases under POCSO Act / Magalir Neethimandram, Chennai;

(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; and

(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.

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

-sd/-
21/03/2022

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 SESSIONS JUDGE
SPECIAL COURT FOR CASES UNDER POCSO ACT /
MAGALIR NEETHIMANDRAM, CHENNAI.

2 THE INSPECTOR OF POLICE
W6, AYANAVARAM ALL WOMEN POLICE STATION,
CHENNAI 600023.



3 THE SUPERINTENDENT OF PRISON,
CENTRAL PRISON, PUZHAL, CHENNAI.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE SECTION OFFICER
CRIMINAL SECTION
HIGH COURT, MADRAS

+1 C.C. to M/S.T.SHANMUGABOOPATHI Advocate on payment of
necessary charges SR.NO.4398

Order
in
CRL MP.3518/2022
in
CRL A.98/2022

Date :21/03/2022

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JPA 23/03/2022