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Crl.M.P.No.3806 of 2022 in Crl.A.No.323 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2022

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THE HONOURABLE MR.JUSTICE **V.SIVAGNANAM**

Crl.M.P.No.3806 of 2022

in

Crl.A.No.323 of 2022

Vishvapandian

... petitioner

/versus/

State, represented by
The Inspector of Police,
W-8, All Women Police Station,
Thirumangalam,
Chennai-04
(Cr.No.7/2016)

.. Respondent

Prayer : Criminal Miscellaneous Petition filed under section 398(1) of Cr.P.C., to suspend the sentence imposed against the petitioner by the learned Sessions Judge, Special Court for exclusive trial of Cases under POCSO Act, Chennai in S.C.No.406 of 2018 dated 28.02.2022 and release the petitioner on bail till the disposal of the Crl.A.No.323 of 2022.

For petitioner

... Mr. B.Kumar, Sr.Counsel
For M/s.Maniprabhu

For Respondent

... Mr.C.E.Pratap
Govt. Advocate (Crl.Side)



ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence imposed against the petitioner by the learned Sessions Judge, Special Court for exclusive trial of Cases under POCSO Act, Chennai in S.C.No.406 of 2018 dated 28.02.2022 and release the petitioner on bail till the disposal of the Crl.A.No.323 of 2022.

2. The respondent police registered a case in Crime No.7 of 2016 for the offences punishable under Sections 6, 10 and 12 of POCSO Act, 2012. The Investigating Officer, after investigation, filed charge sheet before the trial Court and after examination of witnesses, the trial Court conducted the trial and found the accused guilty for the offences punishable under Sections 6, 10 and 12 of POCSO Act, 2012.

3. The petitioner, who is the sole accused in S.C.No.406 of 2018, was convicted and sentenced by the learned Sessions Judge, Special Court for exclusive trial of Cases, Chennai, as follows:

<i>petitioners's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
sole accused	Section 6 of POCSO Act	To undergo Rigorous Imprisonment for 10 years and also pay a fine of Rs.10,000/-, in default undergo Simple Imprisonment for 3 months



<i>petitioners's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
	Section 10 of POCSO Act	To undergo Imprisonment for 5 years and also pay a fine of Rs.10,000/-, in default undergo Simple Imprisonment for 3 months
	Section 12 of POCSO Act	To undergo Imprisonment for 1 year and also pay a fine of Rs.5,000/-, in default undergo Simple Imprisonment for 1 month.

The trial Court further ordered that the victim child is entitled to get an award of compensation of Rs.5,00,000/-. The period already undergone by the accused is ordered to be set off under Section 428 Cr.P.C.

4. Aggrieved over the conviction and sentence imposed by the learned trial Judge, the petitioner has preferred the present Criminal Appeal along with the instant miscellaneous petition, seeking suspension of sentence and bail.

5. The learned counsel for the petitioner/appellant submitted that the petitioner is the natural father of the victim son. There is a dispute between the husband and wife. The wife, by using her son, has foisted a case against the petitioner for sexual assault. There is no medical evidence in support of the prosecution case. Dr.Selvakumar [PW4] has examined the victim child and in his deposition he did not find any external injury on the private parts of the



victim son. In these circumstances, being a false case, the accused is in custody from 28.02.2022. The learned counsel for the petitioner further submitted that there are arguable points in this appeal and the petitioner has a good and fair chance of success in this revision. Thus, he prayed for suspension of sentence imposed on the petitioner till the disposal of this Criminal Appeal.

6. The learned Government Advocate (Crl.Side) for the State objected to grant suspension of sentence.

7. The petitioner has raised substantial grounds in which requires detailed appraisal. Further, the appeal is not likely to be taken up in the near future. In such view of the matter, this Court is of the view that the petitioner is entitled to the relief of suspension of sentence and bail.

8. Accordingly, the relief of suspension of sentence alone is granted on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.10,000/-(Rupees ten thousand only) along with two sureties, each for a likesum to the satisfaction of the Sessions Judge, Special Court for exclusive trial of Cases



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under POCSO Act, Chennai-104.

- (ii) The petitioner and the sureties shall affix their photograph and Left Thumb Impression in the bond and the Trial Court may obtain a copy of his Aadhar card or Bank pass Book to ensure his identity.

23.12.2022

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To

1. The Sessions Judge, Special Court for exclusive trial of Cases under POCSO Act, Chennai-104.

2.The Superintendent,
Central Prison,
Puzhal, Chennai.

2. The Inspector of Police,
W-8, All Women Police Station,
Thirumangalam,
Chennai-04.

3.The Public Prosecutor
High Court, Madras.



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V.SIVAGNANAM, J.

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