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Crl.M.P.No.7302 of 2022
in Crl.A.No.446 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2022

Coram

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE RMT. TEEKAA RAMAN

Crl.M.P.No.7302 of 2022

in

Crl.A.No.446 of 2021

Vijayakumar
S/o.Saravanan

... Petitioner

Vs.

State represented by
Inspector of Police,
All Women Police Station,
Thudiyalur, Coimbatore District.
Crime No.15 of 2016

... Respondent

Criminal Miscellaneous Petition filed u/s.389(1) of the Code of Criminal Procedure praying to suspend the sentence passed in Spl.C.C.No.31 of 2019 dated 03.03.2021 on the file of the learned Special Court for the Exclusive Trial of Cases under POCSO Act, Coimbatore and enlarge on bail pending disposal of the criminal appeal before this Court.

For Petitioner : Mr.Camyles Gandhi
for Mr.C.Ramkumar
For Respondent : Mr.R.Muniyapparaj
Additional Public Prosecutor



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ORDER

[Made by **P.N.PRAKASH, J.**]

This criminal miscellaneous petition has been preferred seeking to suspend the sentence imposed on the petitioner by judgment and order dated 03.03.2021 passed in Spl.C.C.No.31 of 2019 on the file of the learned Judge, Special Court for the Exclusive Trial of Cases under POCSO Act, Coimbatore and to enlarge the petitioner on bail pending disposal of the appeal.

2. The petitioner, who was the sole accused in Spl.C.C.No.31 of 2019 before the learned Judge, Special Court for the Exclusive Trial of Cases under POCSO Act, Coimbatore, was convicted and sentenced as follows on 03.03.2021:

<i>Provision under which convicted</i>	<i>Sentence</i>
Section 5(j)(ii), 5(1) r/w 6 of the POCSO Act	Life imprisonment and fine of Rs.5,000/-, in default to undergo one year rigorous imprisonment.



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3. Challenging the above conviction and sentences, the petitioner/accused has filed Crl.A.No.446 of 2021 along with the instant criminal miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.Camyles Gandhi, learned counsel for the petitioner/accused and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.

5. It is the case of the prosecution that the petitioner had promised to marry PW-1, had sex with her, on account of which, she conceived and delivered a child. Since PW-1 was below 18 years of age at the time of occurrence, the petitioner was prosecuted under the POCSO Act. However, during trial, after PW-1 attained the age of majority, the petitioner has married her, which she has stated even in her examination in chief before the trial Court. She has also stated that she has a second child through the wedlock.



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6. Mr.R.Muniyapparaj, learned Additional Public Prosecutor, strongly objected the present petition and submitted that though PW-1 had turned hostile, the DNA report conclusively established that the petitioner had fathered the first child of PW-1.

7. Taking into consideration the entire facts and circumstances and the fact that the appeal is not likely to be taken up in the near future, this Court is of the view that the petitioner/accused is entitled to the relief of suspension of sentence and bail.

8. Accordingly, the relief of suspension of sentence and bail is granted to the petitioner/accused on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/- [Rupees Twenty Five Thousand only], with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the trial Court;
- (ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity; and



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(iii)The petitioner shall appear before the trial Court everyday at 10.30 a.m. for a period of four weeks and thereafter, the petitioner shall appear before the trial Court on the first working day of every 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.

Accordingly, this Criminal Miscellaneous Petition is disposed of.

[PNP, J.] [TKR, J.]
01.12.2022

Index: Yes/No
gm

To

1.The Special Court for the Exclusive Trial of Cases
under POCSO Act,
Coimbatore.

2.The Inspector of Police,
All Women Police Station,
Thudiyalur, Coimbatore District.



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RMT. TEEKAA RAMAN, J.

gm

3.The Public Prosecutor,
High Court, Madras.

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