

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20..07..2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.M.P.No.8158 of 2022

in Crl.A.No.614 of 2022

Prakash Kumar

... Petitioner

-Versus-

State Rep. By
The Inspector of Police,
All Women Police Station,
Kangeyam, Tiruppur District.
[Crime No.11 of 2021]

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389 of the Code of Criminal Procedure praying to suspend the substantive sentence imposed on the petitioner by the learned Sessions Judge, Magalir Neethimandram, Tiruppur, by judgment dated 27.04.2022 in Spl.SC.No.8 of 2022 and enlarge the petitioner on bail pending Criminal Appeal.

For Petitioner : Mr.P.Kalimuthu

For Respondent / State : Mr.S.Vinoth Kumar,
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition is filed seeking to suspend the substantive sentence imposed on the petitioner by the learned Sessions Judge, Magalir Neethimandram, Tiruppur, by judgment dated 27.04.2022 in Spl.SC.No.8 of 2022 and enlarge the petitioner on bail pending Criminal Appeal.

2. Heard both sides.

3. The petitioner was convicted and sentenced by the trial court to undergo rigorous imprisonment for 20 years and to pay a fine of Rs.10,000/- for offence under Section 5(1) r/w 6 of the POCSO Act, 2012 in default of payment of fine to undergo rigorous imprisonment

for further 1 year; and to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/- for offence under Section 366 of IPC in default of payment of fine to suffer rigorous imprisonment for further six months; to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/- for offence under section 449 of IPC in default of payment of fine to suffer rigorous imprisonment for further six months; and to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.5,000/- for offence under Section 506(ii) of IPC in default of payment of fine to undergo rigorous imprisonment for a further of period of 3 months.

4. The learned counsel for the petitioner would submit that the allegations in this case are in the nature of love affair and the victim child was aged 17 years and the accused was aged about 28 years at the time of occurrence. Therefore, the learned counsel would submit that the trial court has erred in convicting the petitioner under Section 6 of the POCSO Act, 2012.

5. Per contra, the learned Government Advocate (Criminal Side) would submit that in any event, the prosecution has proved that the victim child was aged less than 18 years of age and therefore, he would submit that the trial court was right in convicting the petitioner.

6. Considering the nature of allegations in the nature of love affair, considering the age of the victim as well as the accused and also considering the fact that the accused is under incarceration from date of arrest i.e., from 19.11.2021 onwards, I am of the view that this is a fit case for the grant of suspension of sentence pending disposal of the criminal appeal 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;

(b) the petitioner and the sureties shall affix their photographs and left thumb impressions in the surety bonds and the learned 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 Criminal Appeal and if he 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.

This Criminal Miscellaneous Petition is ordered accordingly.

-sd/-

20/07/2022

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
MAGALIR NEETHIMANDRAM, TIRUPPUR.

2 THE JUDICIAL MAGISTRATE,
KANGEYAM.

3 THE CHIEF JUDICIAL MAGISTRATE
TIRUPPUR [FOR INFORMATION]

4 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
KANGEYAM, TIRUPPUR DISTRICT.

5 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

6 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1C.C. to M/S.P.KALIMUTHU Advocate on payment of necessary
charges SR.No.11890

Order
in
CRL MP.8158/2022
in
CRL A.614/2022
Date :20/07/2022

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

CSK 21/07/2022