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Crl.M.P.No.11180 of 2022
in
Crl.A.No.96 of 2022

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P.N.PRAKASH, J.
AND
R.HEMALATHA, J.

(Made by *P.N.PRAKASH, J.*)

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment and order dated 12.01.2022 passed in New Spl.S.C.No.41 of 2019 (Old Spl.S.C.No.18 of 2017) on the file of the Sessions Court, (Special Court for Exclusive Trial of Cases under the POCSO Act), Salem and to enlarge the petitioner on bail pending disposal of the above appeal.

2. The petitioner, who was an accused in New Spl.S.C.No.41 of 2019 (Old Spl.S.C.No.18 of 2017) before the Sessions Court, (Special Court for Exclusive Trial of Cases under the POCSO Act), Salem, was convicted and sentenced as follows on 12.01.2022:

<i>Provisions under which convicted</i>	<i>Sentence</i>
Section 363 IPC	Three years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo three months simple imprisonment.
Section 366 IPC	Three years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo three months simple imprisonment.



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Section 9 of the Prohibition of Child Marriage Act, 2006	One year rigorous imprisonment and fine of Rs.10,000/-, in default to undergo three months simple imprisonment.
Section 6 of the POCSO Act, 2012	Life imprisonment and fine of Rs.10,000/-, in default to undergo three months simple imprisonment.
The aforesaid sentences were ordered to run concurrently.	

3. Challenging the aforesaid conviction and sentences, the petitioner has filed Crl.A.No.96 of 2022 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.R.Nalliyappan, learned counsel for the petitioner 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 taken away the victim girl, who is less than eighteen years old, had sexual relationship with her and thereafter, the victim girl was secured.

6. On these allegations, the petitioner was prosecuted in Spl.S.C.No.41 of 2019 before the Sessions Court, (Special Court for Exclusive Trial of Cases under the POCSO Act), Salem and was convicted and sentenced as above.



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7. The learned counsel for the petitioner submitted that there is absolutely no evidence to implicate the petitioner in the crime and that apart, there is no satisfactory evidence to show the age of the victim girl.

8. *Per contra*, the learned Additional Public Prosecutor refuted the aforesaid submission made by the learned counsel for the petitioner.

9. In this case, the occurrence took place on 22.05.2015 and the victim girl was secured on 03.07.2015 nearly one month after the occurrence. However, subsequently, the victim girl committed suicide on 02.09.2015.

10. We have circumstantial evidence of Mageswari (PW1) and other witnesses to show that the victim girl was taken away by the petitioner and only after the case was registered by the police, she was secured. As regards the age of the victim girl, medical evidence shows that the age of the victim girl could be between sixteen and eighteen. Whether the victim girl crossed eighteen years or not is a question of fact, which could be decided only during the final disposal of the appeal.



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11. At this juncture, pertinent it is to point out that the Supreme Court, in **Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi)**¹, has considered **Kashmira Singh v. State of Punjab**² and has held as follows:

“30.In the above cases, it has been observed that once a person has been convicted, normally, an appellate court will proceed on the basis that such person is guilty. It is no doubt true that even thereafter, it is open to the appellate court to suspend the sentence in a given case by recording reasons. But it is well settled, as observed in *Vijay Kumar [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195 : JT 2002 Supp (1) SC 60]* that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should consider all the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted.”

1 (2008) 5 SCC 230

<https://www.mhc.mn.gov.in/judis>
2 (1977) SCC (Cri) 559



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In view of the above reasoning and also taking into consideration the serious nature of the allegations against the petitioner, we are of the view that this is not a fit case to grant suspension of sentence and bail to the petitioner and accordingly, this criminal miscellaneous petition stands dismissed.

(P.N.P.,J.) (R.H.,J.)
05.09.2022

nsd

To

- 1.The Sessions Judge,
(Special Court for Exclusive Trial of Cases
under the POCSO Act), Salem.
- 2.The Inspector of Police,
Kitchipalayam Police Station,
Salem District.
- 3.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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