



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2022

CORAM

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.M.P.No.11607 of 2021

in

Crl.A.No.544 of 2021

S.Prakash

... Petitioner

Vs.

State by ,
The Inspector of Police,
Azlagapuram Police Station.

(Crime No.427 of 2015)

... Respondent

PRAYER: The Criminal Miscellaneous Petition is filed under Section 389 of the Code of Criminal Procedure, to suspend the sentence imposed on petitioner by the Special Court for POCSO Act, Salem in S.C.No66 of 2019, dated 26.08.2021 and enlarge petitioner on bail.

For Petitioner : Mr.A.G.Rajan

For Respondent : Mr.S.Sugendran

Government Advocate (Crl.Side)

ORDER

(This case has been heard through Video Conference)

This Criminal Miscellaneous Petition has been filed by the Petitioner, seeking suspension of sentence of imprisonment, imposed by the Special Court for POCSO Act, Salem in S.C.No.66 of 2019, dated 26.08.2021.

2. In and by the judgment of the Trial court, the petitioner/accused was convicted and sentenced as follows:-



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Offence	Conviction & Sentence
363 IPC	5 years R.I and to pay a fine of Rs.5,000/-, in default to undergo three months S.I
366 IPC	5 years R.I and to pay a fine of Rs.5,000/-, in default to undergo three months S.I
9 of Prohibition of Child Marriage Act	2 years R.I and to pay a fine of Rs.10,000/-, in default to undergo three months S.I
6 r/w 5(1) of Protection of Children from Sexual Offences Act, 2012	10 years R.I and to pay a fine of Rs.10,000/-, in default to undergo six months S.I

against which, the present Criminal Appeal has been filed.

3. The submissions of the learned counsel for the petitioner are as under:-

(a) Even as per prosecution, it is a case of love affair and elopement of the petitioner/appellant and the victim. The victim, at the time of occurrence, had completed 18 years. The victim who is the daughter of Duraisamy and Santhi of Pukiravari village, was born on 16.11.1997 at the Pukiravari Government Hospital. The prosecution has purposefully suppressed the birth certificate and had only produced the educational certificate which has been marked through PW9/Head Master. The birth certificate was not marked and the best evidence was suppressed by the prosecution. It is the evidence of PW3/victim girl that she was studying 12th standard and there was a love affair between them and her family, coming to know about the love affair, had searched for a bride groom and fearing her relatives would get her married to someone else against her will, had informed the petitioner/Appellant and thereafter, they have eloped. It is her further case that she having completed 18 years, had gone along with the petitioner/appellant and that since, her parents feared that she would elope, had left her in her aunty's house.

(b) The prosecution had suppressed the best evidence and the Trial Court without looking into the same had found the petitioner/appellant guilty. The petitioner is taking steps to let in additional evidence to prove the correct age of the victim girl on the date of occurrence. Apart from the above, the appellant belongs to the oppressed community so that the parents of the victim have projected as if the victim is a minor, so as to separate them.



(c) The petitioner has got a fair chance of succeeding in the Criminal Appeal and there are arguable points available in the Criminal Appeal, however, as the Appeal is not likely to be taken for final hearing in the near future, the sentence imposed against the petitioner may be suspended and the petitioner may be enlarged on bail.

4. Mr.S.Sugendran, learned Government Advocate (Crl.Side) would submit that though, the victim in her evidence had stated that she had completed 18 years, the prosecution by producing the educational certificate, have proved that the victim is less than 18 years on the date of occurrence.

5. Heard the learned counsel for the parties and perused the materials on record.

6. Considering the facts and circumstances of the case and also considering the submissions of the learned counsel for the petitioner, this Court is of the view that the sentence of imprisonment can be suspended on certain conditions. Accordingly, till the disposal of the Criminal Appeal, suspension of sentence and bail are granted, on the following conditions :-

i. The petitioner shall execute a bond for a sum of Rs.20,000/- (Rupees Twenty Thousand only), with two sureties, each for a like sum to the satisfaction of the Trial Court.

ii. The petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m., until further orders.

6. The Criminal Miscellaneous Petition is ordered accordingly.

-sd/-

10/01/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.



1 THE SPECIAL COURT FOR POCSO ACT,
SALEM.

2 THE INSPECTOR OF POLICE
AZLAGAPURAM POLICE STATION,
SALEM DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

4 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1C.C. to M/S.A.G.RAJAN Advocate on payment of necessary
charges SR.No.442

Order
in
CRL MP.11607/2021
in
CRL.A.544/2021
Date :10/01/2022

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CSK 11/01/2022