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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2022

CORAM:

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

Crl.M.P.No.12303 of 2021

in

Crl.A.No.596 of 2021

Rupan

...Petitioner

Vs.

State by Inspector of Police,
W-9 All Women Police Station,
Villivakkam,
Chennai 600 049
(crime No.4 of 2018)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 CL (1) of Cr.P.C. to suspend the sentence of imprisonment imposed by the learned Sessions Judge, Special Court for Exclusive Trial Under Pocso Cases at Chennai in SC.No.212 of 2019 dated 09.11.2021 and enlarge the petitioner on bail pending disposal of Crl.A.No.596 of 2021.

For Petitioner : Mr.V.K.Sathiamurthy

For Respondent : Mr.Leonard Arul Joseph Selvam,
Government Advocate (crl.side)

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner/accused, seeking suspension of sentence imposed upon the petitioner in SC.No.212 of 2019 dated 09.11.2021 by the learned Sessions Judge, Special Court for Exclusive Trial Under Pocso Cases at Chennai and enlarge the petitioner on bail pending disposal of the above criminal appeal.

2. The case of the prosecution is that the victim child (PW1) was residing along with her mother, who got divorced from her husband due to misunderstanding, in a house taken for lease from the month of August 2017. During the relevant point of time, the victim child is studying 9th standard. Her mother attending classes for TNPSC Group-II examination from Anna Nagar from the month of April 2018. On



16.10.2018 at about 5.45 pm, when the mother of the victim child return to their house after their work, the victim child contact her over phone and asked her to come from their back door as the front door was locked.

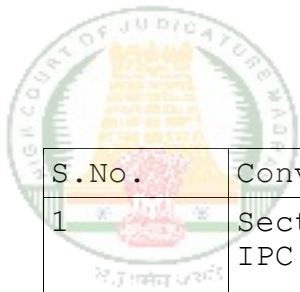
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2.1 Accordingly, the mother of the victim child get into their house through the back door of their house. When she entered into their house, the bedroom was locked outside. The victim child was inside that bedroom. The mother of the victim child opened the door and questioned her that who had locked her inside. For which the victim child informed that the accused moved her friendly at first proposed for love and instructed her to inform her mother's absence in the home to him.

2.2 Accordingly, at the first time in the month of August, one Sunday at about 03.30 pm, after the mother of the victim child went for class, the victim child informed the same to the accused and called him to come to her house from the back door. The accused came from the back side of his house, and entered into the house of the victim child through the back door of the house of the victim child and they had physical relationship with the victim child by using condoms. When the victim child opposed the same, the accused by stating that it is not wrong to have physical relationship and also informed that if they had physical relationship by using condoms nothing will be disclose to others. After one or two weeks, the accused again came to the house of the victim child and had physical relationship with the victim child.

2.3 Finally, in the last week of September, 2018, the accused had physical relationship with the victim child. Afterwards he had not contact the victim child due to the ill health of his father. On 16.10.2018 at about 04.00 pm, he came to the house of the victim child and talked to her in the hall. When the victim child came to their bedroom to change her dress to go to the tuition, the accused locked the bedroom and went out of the said house. The accused repeatedly had physical relationship with the victim child by using condoms in the absence of her mother at her house itself by uttering desirous words as he loved her. The law was set in motion by lodging complaint by the mother of the victim child. On completion of investigation, the Inspector of Police, W-9, All Women Police Station, Villivakkam had laid final report against the accused under Section 6 of POCSO Act.

3. After elaborate trial in SC.No.212 of 2019, the learned Sessions Judge, Special Court for Exclusive Trial Under Pocso Cases at Chennai found the accused guilty of the offence under Section 6 of POCSO Act, 2012 r/w 376(3) of IPC r/w 42 of POCSO Act, 2012 and he has been convicted and sentenced as under:



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S.No.	Conviction	Sentence
1	Section 376(3) of IPC	to undergo rigorous imprisonment for a period of 20 years with a fine of Rs.25,000/-, in default to undergo simple imprisonment for 3 months. Under the proviso clause of Section 376(3) of IPC, the fine amount of Rs.25,000/- is ordered to be paid to the victim child as compensation
In respect to Section 6 of POCSO Act, no separate sentence was awarded		

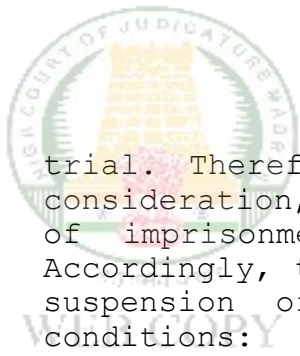
Aggrieved against the same, the petitioner/accused has filed the present criminal appeal.

4. The learned counsel appearing for the petitioner would contend that during the relevant point of time, nothing had happened in the victim child's house as alleged by the prosecution. Though the victim child has stated that before lodging the complaint, she is having sexual intercourse with the accused for four times, she has not stated about the date on which the said alleged occurrence had happened. Therefore in the absence of any material evidence, convicting the accused for the offence under Section 6 of the POCSO Act is erroneous one and therefore, the petitioner is before this Court for suspension of substantive sentence.

5. Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent/State raised objection stating that if this type of petitioner is released on bail, he may try to tamper the witness and hamper the investigation. However he admits, before the trial, the petitioner is enlarged on bail.

6. Heard the learned counsel appearing on either side and also perused the materials placed on record.

7. The petitioner has been charged for the offence punishable under Sections 6 of POCSO Act, 2012 r/w 376(3) of IPC r/w 42 of POCSO Act, 2012. The evidence given by the victim child before the trial court was perused. The averments found in the F.I.R. as well as the evidence given by the PW1 before the trial court would disclose the fact that on the date of complaint, there was no sexual relationship between the petitioner and the victim child. Though it was stated by the victim child as previous to lodging the complaint, she is indulged in sexual activities with the petitioner, she has not stated anything about the date on which the alleged occurrence had happened. In all the evidence given by the PW1 would reveal the fact that the present case has been lodged before the police not immediately after the occurrence. Further the petitioner is studying final year in Loyola College. More than that he is enlarged on bail during the time of



trial. Therefore, taking note of all the above said aspects into consideration, this Court is of the view that the substantive sentence of imprisonment alone can be suspended on certain conditions. Accordingly, till the disposal of the Criminal Appeal, the reliefs of suspension of sentence and bail are granted 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 learned Sessions Judge, Special Court under POCSO Act, Chennai-104.

(b) The petitioner and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the 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 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.

8. With the above directions, this Criminal Miscellaneous Petition is ordered.

-sd/-

16/03/2022

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,
SPECIAL COURT FOR EXCLUSIVE TRIAL UNDER POCSO CASES,
CHENNAI.

2 THE INSPECTOR OF POLICE,
W-9, ALL WOMEN POLICE STATION,
VILLIVAKKAM CHENNAI 600049.



3 THE SUPERINTENDENT
CENTRAL PRISON, PUZHAL, CHENNAI.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE HON'BLE POCSO COMMITTEE
HIGH COURT, MADRAS.

+2C.C. to M/S.C.RAJAN Advocate on payment of necessary charges
SR.No.4054

Order
in
CRL MP.12303/2021
in
CRL.A.596/2021
Date :16/03/2022

From 7.2.2001 the Registry is issuing certified
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CSK 16/03/2022