



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2022

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.M.P.No.12618 of 2021

in

Crl.A.No.610 of 2021

Mohammed Shabeer

... Petitioner

..Vs..

State By:

... Respondent

The Inspector of Police,
Anamalai Police Station,
Coimbatore District.
(Crime No.211/2019).

PRAYER: Criminal Miscellaneous petition filed under Section 389(i) of Cr.P.C, to suspend the sentence passed by the learned Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Coimbatore in Special C.C.No.46 of 2020 dated 04.05.2021 and enlarge the petitioner on Bail, pending disposal of the Criminal Appeal.

For Petitioner : Mr.M.N.Balakrishnan

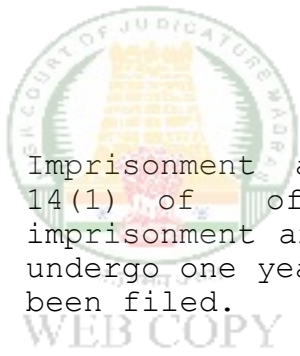
For Respondent : Mr.L.A.J.Selvam
Government Advocate (crl.side)

ORDER

(This Case has been heard through video conferencing)

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed by the learned Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Coimbatore in Special C.C.No.46 of 2020 dated 04.05.2021 and enlarge the petitioner on Bail, pending disposal of the Criminal Appeal.

2.In and by the judgment of the trial court, petitioner/accused was acquitted for the offence under sections 294(b) and 506(i) IPC and convicted for the offence under Section 354(D)(i)(ii) of IPC and sentenced to undergo three years of Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo six months of Simple



Imprisonment and convicted for the offence under section 13 read with 14(1) of POCSO Act 2012 and sentenced to undergo 5 years imprisonment and to pay a fine of Rs.5000/- and in default to pay to undergo one year imprisonment and against which the present appeal has been filed.

3. On the side of the prosecution, P.W.1 to P.W.12 were examined and Exs.P1 to Ex.P11 were marked and M.O.1 was marked. Ex.C.1 was marked. When the accused was questioned under section 313 Cr.P.C., he denied the charges. However, no evidence was let in on the side of the defence. The trial court after hearing both sides found the petitioner/accused guilty for the offence under sections 354(D)(i)(ii) of IPC13 read with 14(1) of POCSO Act 2012 and convicted as stated above.

4. Learned counsel appearing for the petitioner would submit that the case of the prosecution is that the petitioner stalked a minor girl and had circulated the photographs taken along with her in social media through his mobile phone. It is the case of the prosecution that P.W.3 and P.W.4 who had seen the photographs which have been circulated informed P.W.1 the father of the victim and based on his complaint, a case was registered. However, in this case, though the phone was alleged to be recovered from the petitioner, the SIM card was not recovered and no scientific evidence was let in by the prosecution to prove that the photographs emanated from the phone of the petitioner. He would submit that as per the prosecution, the photographs are not obscene. He would further submit that there are arguable points available in the Criminal Appeal Case, which is not likely to be taken for final hearing in the near future and the Petitioner/accused has got a fair chance of succeeding in the Criminal Appeal Case.

5. Mr.L.A.J.Selvam, learned Government Advocate (crl.side) would submit that the Trial Court finding that the prosecution had proved the case beyond reasonable doubt has found the accused guilty for the offence under section 354(D)(i)(ii) of IPC13 read with 14(1) of POCSO Act 2012 and thereby would oppose for grant of suspension of sentence.

6. Heard the learned counsels and perused the materials on record.

7. Considering the facts and circumstances of the case and also considering the submissions of the learned counsel for the petitioner/accused, 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, the reliefs of suspension of sentence and bail are granted, on the following conditions :-



i. The petitioner/accused shall execute own bond for a sum of Rs.10,000/- (Rupees Ten Thousand only), before the Superintendent of the concerned prison/Jailor concerned, in which the petitioner has been confined and thereafter, on his release, the petitioner shall execute two sureties for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only), of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Special Court for exclusive trial of cases under POCSO Act, Coimbatore within 15 days from the date of commencement of the court's normal functioning, failing which the bail granted by this court shall stand dismissed automatically and on further conditions that:

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

8. The Criminal Miscellaneous Petition is ordered accordingly.

-sd/-
31/01/2022

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 SPECIAL COURT FOR EXCLUSIVE
TRIAL OF CASES UNDER POCSO ACT,
COIMBATORE.

2 THE INSPECTOR OF POLICE,
ANAMALAI POLICE STATION,
COIMBATORE DISTRICT

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.



4 THE SUPERINTENDENT,
CENTRAL PRISON,
COIMBATORE.

WEB COPY +1C.C. to M/S M.N.BALAKRISHNAN Advocate on payment of necessary
charges SR.No.1610

Order
in
CRL MP.12618/2021
in
CRL.A.610/2021
Date :31/01/2022

From 7.2.2001 the Registry is issuing certified
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CSK 02/02/2022