

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.12326 of 2021

in

Crl.A.No.598 of 2021

Kanagaraj @ Bagavathiappan

... Petitioner

..Vs..

State By:

The Inspector of Police,
Anamalai Police Station,
(Crime No.113/2019)
Coimbatore District.

... Respondent

PRAYER: Criminal Miscellaneous petition filed under Section 389(1) of Cr.P.C, to suspend the sentence passed by the learned Sessions Judge, Special Court for POCSO Cases, Coimbatore in Special C.C.No.88 of 2019 dated 23.10.2020 and enlarge the petitioner on Bail, pending disposal of the Criminal Appeal.

For Petitioner : Mr.D.R.Arun Kumar

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

O R D E R

(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 POCSO Cases, Coimbatore in Special C.C.No.88 of 2019 dated 23.10.2020 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 506(i) IPC and convicted him for the offence under Section9(i)(1)(n) read with 10 and sentenced to undergo 7 years R.I. and to pay fine of Rs.2000 in default to undergo one year R.I. and convicted for the offence under section 11(i) r/w 12 of POCSO Act 2012 and sentenced to undergo 3 years R.I. and to pay fine of Rs.2000/- in default to undergo 6 months R.I. and against which the present appeal has been filed.

3. On the side of the prosecution, P.W.1 to P.W.21 were examined and Exs.P1 to Ex.P27 were marked and no material objects were marked. No evidence was let in on the side of the defence. 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 and convicted for the offences as stated above.

4. Learned counsel appearing for the petitioner would submit that the petitioner is the father of the alleged victim who was aged 17 years and 10 months at the relevant time. The petitioner had reprimanded her for certain reasons due to which, she had gone away from the house without informing the petitioner. Thereafter, on the complaint given by the petitioner, a case in crime No.113/2019 was registered for girl missing. Later the victim was traced in her friend suganya's relative PW3's house after two weeks. She is stated to have been taken by P.W.10 a van driver to her friend's house. PW3 and PW10 have deposed that the victim had told them that her father had beaten her and thereby she had left the house without informing him. Admittedly, P.W.4, the wife of the petitioner and mother of the victim is living separately due to matrimonial dispute and she had also in her cross-examination admitted that her daughter had not complained about the petitioner to her and she had also admitted that it is the petitioner who had informed about the missing of their daughter. He would further submit that the neighbours who have been examined as PW6 and PW9 and the driver who has been examined as P.W.10 have not supported the case of the prosecution. He would further submit that right from the date of conviction, the petitioner is in custody. 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 offences under section 9(i)(1)(n) r/w 10 and 11(i)r/w 12 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.15,000/- (Rupees Fifteen Thousand only), each for a like sum to the satisfaction of the learned Judicial Magistrate No.I, Pollachi 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 JUDICIAL MAGISTRATE,
NO.I, POLLACHI

2 THE CHIEF JUDICIAL MAGISTRATE
COIMBATORE (FOR INFORMATION)

3 THE INSPECTOR OF POLICE,
ANAIMALAI POLICE STATION,
COIMBATORE DISTRICT.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

6 THE SECTION OFFICER,
CRIMINAL SECTION, HIGH COURT,
MADRAS.

C.C. to M/S.D.R.ARUN KUMAR Advocate on payment of necessary
charges Sr.1468

Order

in
CRL MP.12326/2021

in
Crl.A.No.598 of 2021

Date :31/01/2022

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