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Crl.M.P.No.509 of 2023 in Crl.A.No.47 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.M.P.No.509 of 2023

in

Crl.A.No.47 of 2023

Suresh

... Petitioner

/vs/

The State represented by
the Inspector of Police,
All Women Police Station,
Cheyyar, Thiruvannamalai District
Cr.No.22/2013.

.. Respondent

Prayer : Criminal Miscellaneous Petition filed under section 389(1) r/w.439 of Cr.P.C., to suspend the sentence imposed against the petitioner in Spl.S.C.No.6 of 2019 on the file of the learned Special Court POCSO Cases, Thiruvannamalai, Thiruvannamalai District, dated 26.07.2022 and enlarge the petitioner on bail, pending disposal of the above criminal appeal.

For Petitioner

... Mr.V.Parthiban
for Mr.E.Kannadasan

For Respondent

... Mr.C.E.Pratap, GA (crl.side)

ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence imposed on the petitioner in Spl.S.C.No.6 of 2019 by



judgment dated 26.07.2022 passed by the Special Court POCSO Cases, Thiruvannamalai, Thiruvannamalai District and release the petitioner on bail, pending disposal of the above appeal.

2. The petitioner, who is sole accused in Spl.S.C.No.6 of 2019 is convicted and sentenced by the trial court, by its judgment dated 26.07.2022 as follows;

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Sole accused	U/s.366 of IPC	To undergo 10 years RI and a fine of Rs.1,000/-, in default in payment of fine, to undergo SI for one year.
	U/s.376 of IPC and Sec.6 of POCSO Act,2012	To undergo RI for 20 years and to pay a fine of Rs.1000/-, in default in payment of fine, to undergo SI for one year;
	Sec.8 of POCSO Act,2012	To undergo RI for 5 years and to pay a fine of Rs.1000/-, in default in payment of fine, to undergo SI for one year;
	U/s.506 (i) IPC	To undergo one year RI
	U/s.354 IPC	To undergo RI for one year and to pay a fine of Rs.1000/-, in default in payment of fine, to undergo 3 months SI.

The sentences of imprisonments were ordered to run concurrently.

3. Aggrieved over the judgment of conviction and sentence imposed on



the petitioner in Spl.S.C.No.6 of 2019, the petitioner has filed the present criminal appeal, along with the instant miscellaneous petition, seeking suspension of sentence and bail.

4. The learned counsel for the petitioner submitted that the judgment of the trial court is contrary to law, weight of evidence and probabilities of the case. As per the prosecution case, PW1 to PW3 were projected as witnesses to the occurrence. The evidence of PW3 is not supporting the prosecution case, since it turned hostile. Further, there is a contradiction between the witnesses PW1 and PW2 and PW10- the Doctor who examined the victim girl has also deposed that in chemical analysis report, no traces of semen or blood were found from the smear of the victim. He would further submit that there are arguable points in this appeal and the petitioner has every chance to succeed in this Criminal appeal and the petitioner is confined in prison since 26.07.2022. Thus, he prayed for suspension of sentence till the disposal of this Criminal Appeal.

5. The learned Govt. Advocate (crl.side) vehemently opposed to grant suspension of sentence since the petitioner has committed grave offence.



6. Heard the learned counsel for the petitioner and learned Govt. advocate (crl.side) and perused the entire material evidence available on record.

7. Perusal of records would reveal that among 13 witnesses, PW1 to PW3 were projected as witnesses to the occurrence. PW3, one of the projected witnesses is not supporting the case of prosecution. She was treated as hostile and the Doctor-PW10, who examined the victim girl deposed that in the chemical analysis report, no traces of semen or blood were found in the smear taken from the victim girl's private parts. The petitioner has raised substantial grounds in the appeal which require detailed appraisal. Further, the appeal is not likely to be taken up in the near future and the petitioner is in prison from 26.07.2022. Considering the above aspects and other facts and circumstances of the case, this Court is of the view that the petitioner is entitled to the relief of suspension of sentence and bail.

8. Accordingly, the relief of suspension of sentence and bail is granted to the petitioner on the following conditions:

(i) The petitioner is ordered to be released on bail on



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executing a bond for a sum of Rs.10,000/-(Rupees ten thousand only) along with two sureties, each for a like sum, to the satisfaction of the Trial Court;

(ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bonds and the trial Court may obtain a copy of their Aadhaar card or Bank pass Book to ensure their identity; and;

(iii) The petitioner shall appear before the trial Court as and when required.

20.02.2023

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To

- 1.The Special Judge, Special Court POCSO Cases, Thiruvannamalai, Thiruvannamalai District,
- 2.The Inspector of Police,
All Women Police Station,
Cheyyar, Thiruvannamalai District
- 3.The Public Prosecutor, High Court, Madras.
4. The Superintendent, Central Prison,
Vellore.

V.SIVAGNANAM, J.



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