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CrI.M.P.No.1593 of 2023 in CrI.A.No.1326 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CrI.M.P.No.1593 of 2023

in

CrI.A.No.1326 of 2022

Gunasekaran

... Petitioner

/vs/

The State, represented by
Inspector of Police,
All Women Police Station,
Dharapuram Police Station,
Tiruppur District
(Crime No.2 of 2021)

.. Respondent

Prayer : Criminal Miscellaneous Petition filed under section 389(i) of Cr.P.C., to suspend the sentence imposed against the petitioner on 07.07.2022 in Spl.SC.No.35 of 2021 on the file of the Sessions Court, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur and release the petitioner on bail till the disposal of the Criminal Appeal in CrI.A.No.1326 of 2022.

For Petitioner

... Mr. P. Pugalenthir

For Respondent

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



ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence, dated 07.07.2022 imposed against the petitioner in Spl.SC.No.35 of 2021 on the file of the Sessions Court, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur and enlarge the petitioner on bail, pending disposal of the above appeal.

2. The petitioner, who is the sole accused in Spl.SC.No.35 of 2021 is convicted and sentenced by the trial court, by its judgment dated 07.07.2022 as follows;

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Sole accused	U/s.366 IPC	To undergo five years RI and a fine of Rs.500/-, in default in payment of fine, to undergo 3 months SI
	U/s.5(1), r/w.Sec.6 (i) of POCSO Act	To undergo 20 years RI and a fine of Rs.1,000/-, in default in payment of fine, to undergo further SI for 3 months
The sentences of imprisonments were ordered to run concurrently		

3. Aggrieved over the judgment of conviction and sentence imposed on the petitioner in Spl.SC.No.35 of 2021, the petitioner has filed the present



criminal appeal, along with the instant miscellaneous petition, seeking suspension of sentence and bail.

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4. The learned counsel for the petitioner submitted that the petitioner and the victim girl had love affair with each other and she eloped with the accused voluntarily to Velankanni and stayed with him, but according to the prosecution case, the petitioner took the victim girl to his house and had forcible sexual relationship with her. Further, the evidence of PW8 is not supporting the case of prosecution. He further submitted that there are arguable points in this appeal and the petitioner has every chance to succeed in this Criminal appeal and the petitioner has been in incarceration since 28.01.2021. Thus, he prayed for suspension of sentence till the disposal of this Criminal appeal.

5. The learned Govt. Advocate (crl.side) submitted that though the victim girl had love affair with the petitioner, she had not consented for sexual relationship with the petitioner. Her evidence did not reflect her consent for sexual relationship with the accused. Thus, he objected to grant suspension of sentence.



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

7.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. In such view of the matter, 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 executing a bond for a sum of Rs.25,000/-(Rupees twenty five 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;



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

10.02.2023

msr

To

1. The Sessions Court, Magalir Neethimandram
(Fast Track Mahila Court), Tiruppur
2. The Inspector of Police,
Dharapuram Police Station,
Tiruppur District
3. The Public Prosecutor, High Court, Madras.
4. The Superintendent, Central Prison,
Coimbatore.



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V.SIVAGNANAM, J.

msr

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