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Crl.M.P.No.1457 of 2023 in Crl.A.No.112 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.M.P.No.1457 of 2023

in

Crl.A.No.112 of 2023

Raman

... Petitioner

/vs/

The State by
Inspector of Police,
All Woman Police Station,
Omalur, Salem District.
(Cr.No.23 /2018)

.. Respondent

Prayer : Criminal Miscellaneous Petition filed under section 389(1) r/w.439 of Cr.P.C., to suspend the sentence passed in Old Spl.S.C.No.143 of 2018 in New Spl.S.C.No.176 of 2019 on the file of the Sessions Judge, Special Court for POCSO Act Cases, Salem, by judgment dated 10.08.2021 and enlarge the petitioner on bail, pending disposal of the above appeal.

For petitioner ... Mr. B. Vasudevan

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

ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence passed in Old Spl.S.C.No.143 of 2018 in New



Spl.S.C.No.176 of 2019 on the file of the Sessions Judge, Special Court for POCSO Act Cases, Salem, by judgment dated 10.08.2021 and enlarge the petitioner on bail, pending disposal of the above appeal.

2. The petitioner, who is the sole accused in lld.Spl.S.C.No.143 of 2018 and New Spl.S.C.No.176 of 2019 is convicted and sentenced by the trial court, by its judgment dated 10.08.2021 as follows;

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Sole accused	U/s.363 of IPC	To undergo 3 years RI and to pay a fine of Rs.5,000/-, in default in payment of fine, to undergo one month SI
	U/s.366 IPC	To undergo 3 years RI and to pay a fine of Rs.5,000/-, in default in payment of fine, to undergo one month SI
	U/s.9 of Child Marriage Prevention Act, 2006	To undergo 2 years RI and to pay a fine of Rs10,000/-, in default in payment of fine, to undergo three months SI
	U/s.5(1) r/w.6 of POCSO Act, 2012	To undergo 20 years RI and a fine of Rs.20,000/-, in default in payment of fine, to undergo Six months SI

The sentences of imprisonments were ordered to run concurrently.

The total fine amount of Rs.40,000/- was ordered to be paid as compensation to the victim under section 357(1) Cr.P.C., after expiry of appeal period.



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3. Aggrieved over the judgment of conviction and sentence imposed on the petitioner by the trial court, 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. In the statement recorded under section 164 Cr.P.C., the victim has not stated anything incriminatingly against the petitioner, but before the trial court, she deposed that she had love affair with the accused and went along with the petitioner to marry him and they both stayed at Thiruppur, where she had sexual relationship with the petitioner. Thus, there is material discrepancy between the evidence and 164 statement of the victim girl. He further submitted that there are arguable points in this appeal and the petitioner has every chance to succeed in this criminal appeal as the petitioner is now confined in prison. Thus, he prayed for suspension of sentence till the disposal of this criminal appeal.

5. The learned Govt. Advocate (clr.side) supporting the impugned judgment of the trial court submitted that the victim girl is a minor and the



consent of the minor for having sexual intercourse is immaterial, thus the offence of POCSO is made out. Stating so, he objected for granting suspension of sentence.

6. Perusal of the evidence of PW2-victim girl and the statement of the victim girl recorded under section 164 of Cr.P.C., would reveal that there is a material discrepancy between the evidence and 164 statement of the victim girl. A further perusal of record reveals that both the victim girl and the petitioner had love affair with each other. 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. Considering the gravity of offence and material discrepancy between the evidence and statement of the victim girl recorded under section 164 Cr.P.C., and there are arguable points in favour of the petitioner, this Court is of the view that the petitioner is entitled to the relief of suspension of sentence and bail.

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



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(i) The petitioner is ordered to be released on bail on executing a bond for a sum of Rs.10,000/-(Rupees ten thousand thousand only) along with two sureties, each for a like sum, to the satisfaction of the Sessions Judge, Special Court for POCSO Act Cases, Salem.

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

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

22.02.2023

msr

To

1. The Special Judge, Special Court under TNPID Act, Coimbatore
2. The Inspector of Police,
All Woman Police Station,
Omalur, Salem District.
3. The Public Prosecutor, High Court, Madras.
4. The Superintendent, Central Prison, Coimbatore.



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V.SIVAGNANAM, J.

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