



WEB COPY



CrI.M.P.No.677 of 2023 in CrI.A.No.849 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CrI.M.P.No.677 of 2023

in

CrI.A.No.849 of 2022

Shabi

... Petitioner

/vs/

The State, represented by
the Inspector of Police,
W.15, All Women Police Station,
Washermenpet,
Chennai 600 021.
Cr.No.2 /2019.
Respondent

..

Prayer : Criminal Miscellaneous Petition filed under section 389(1) of Cr.P.C., to suspend the sentence imposed in Spl.Sessions Case No.78 of 2020 dated 22.06.2022 passed by the Court of Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai and enlarge the petitioner on bail, pending disposal of the above criminal appeal.

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

ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence imposed in Spl.Sessions Case No.78 of 2020 dated



22.06.2022 passed by the Court of Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai and enlarge the petitioner on bail, pending disposal of the above criminal appeal.

2. The petitioner, who is the sole accused in Spl.Sessions Case No.78 of 2020 is convicted and sentenced by the trial court, by its judgment dated 22.06.2022 as follows;

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Sole accused	U/s.10 of POCSO Act, 2012	To undergo 7 years imprisonment and a fine of Rs.25,000/-, in default in payment of fine, to undergo 3 months SI;
	U/s.357 and 506(i) IPC	Acquitted from the charges u/s.235(1) Cr.P.C.

3. Aggrieved over the judgment of conviction and sentence imposed on the petitioner in Spl.Sessions Case No.78 of 2020, 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



WEB COPY

case. The petitioner is the step father of the victim girl and he is convicted by the trial court only based on the evidence of victim girl, but all other witnesses turned hostile and did not support the prosecution case. He would further submit that there are arguable points in this appeal and the petitioner has every chance to succeed in this Criminal appeal. The petitioner is in incarceration from 22.6.2022. The victim girl is now at her maternal grandmother's house and the victim's mother who is present before this court is also assuring to keep the victim girl safely without any harassment. The victim girl's mother also submitted that since the petitioner is in judicial custody, her family is also suffering. Thus, the learned counsel for the petitioner prayed for suspension of sentence till the disposal of this Criminal appeal.

5. The learned Govt. Advocate (crl.side) vehemently objected to grant suspension of sentence to the petitioner, however, the case of the petitioner may be considered on execution of the affidavit of undertaking by the petitioner and the mother of the victim girl stating that there should be no harassment or torture on the victim girl in future by the accused in any form.

6. In reply, the learned counsel for the petitioner submitted that the



petitioner and the mother of the victim girl are ready to file affidavit of undertaking that they shall not subject the victim girl to any kind of torture or harassment in future.

7. Perused the the evidence of victim girl and other materials available on record. The mother of the victim girl, who is present today before this Court has assured that the victim girl shall be kept at her maternal grand mother's house safely and she also consented to execute an affidavit of undertaking that she will not be subjected to any harassment or torture by the accused again. The undertaking given by the victim girl's mother is hereby recorded. 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.10,000/-(Rupees ten thousand only) along with two sureties, each for a like sum,



WEB COPY



CrI.M.P.No.677 of 2023 in CrI.A.No.849 of 2023

to the satisfaction of the Trial Court;

(ii) The petitioner and the mother of the victim girl shall file an affidavit of undertaking before the trial court stating the victim girl shall be kept at her maternal grand mother's home safely without subjecting her to any kind of harassment and torture.

(iii) 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;

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

15.02.2023

msr

To

- 1.The Court of Sessions Judge, Special Court
for Exclusive Trial of Cases under POCSO Act, Chennai
2. The Inspector of Police,
W.15, All Women Police Station,
Washermenpet,
Chennai 600 021.
3. The Public Prosecutor, High Court, Madras.
4. The Superintendent, Central Prison,
Puzhal, Chennai.



WEB COPY



CrI.M.P.No.677 of 2023 in CrI.A.No.849 of 2022

V.SIVAGNANAM, J.

msr

CrI.M.P.No.677 of 2023
in
CrI.A.No.849 of 2022

15.02.2023