



Crl.M.P.No.535 of 2023 in Crl.A.No.49 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 26.04.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE V.SIVAGNANAM**

**Crl.M.P.No.535 of 2023**

**in**

**Crl.A.No.49 of 2023**

S.Sonukumar

... Petitioner

/vs/

1. State rep by The Inspector of Police,  
W.4 All Women Police Station,  
Kilpauk, Chennai – 600 010.

2. J.Thangaraj

.. Respondents

**Prayer :** Criminal Miscellaneous Petition filed under section 389(i) read with 439 of Cr.P.C., to suspend the sentence, dated 20.12.2022 imposed on the petitioner in Special Sessions Case No.44 of 2022 on the file of the Additional Special Court for Exclusive Trial of Cases under POCSO Act, [Mahalir Neethimandram] Allikulam, Chennai - 600 003. and enlarge the petitioner on bail, pending disposal of the above appeal.

For Petitioner

... Mr. S.Suresh  
for Mr.G.Anbuchezeian

For Respondent

... Mr.A.Gokulakrishnan  
Additional Public Prosecutor

**ORDER**

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence, dated 20.12.2022 imposed on the petitioner in Special Sessions Case No.44 of 2022 on the file of the Additional Special Court for Exclusive Trial of Cases under POCSO Act, [Mahalir Neethimandram] Allikulam, Chennai - 600 003 and enlarge the petitioner on bail, pending disposal of the above appeal.

2. The petitioner, who is the sole accused in Special Sessions Case No.44 of 2022 is convicted and sentenced by the trial court, by its judgment dated 20.12.2022 as follows;

| <b><i>Petitioner's Rank</i></b> | <b><i>Provision under which convicted</i></b> | <b><i>Sentence</i></b>                                                                              |
|---------------------------------|-----------------------------------------------|-----------------------------------------------------------------------------------------------------|
| Sole accused                    | U/s.366 IPC                                   | To undergo 5 RI and a fine of Rs.5,000/-, in default in payment of fine, to undergo 3 months SI     |
|                                 | U/s.10 of POCSO Act                           | To undergo years RI and a fine of Rs.5,000/-, in default in payment of fine, to undergo 3 months SI |

The period of detention already undergone by the accused is ordered to be set off under section 428 Cr.P.C. and both the sentence shall run concurrently.

Total Fine amount Rs.10,000/-.



3. Aggrieved over the judgment of conviction and sentence imposed on the petitioner in Special Sessions Case No.44 of 2022, 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 would submit that the petitioner and the victim had love affair, which is admitted by the victim in her evidence. He further submitted that Dr.Thiruvankateswari, who had examined the victim had deposed that the victim had stated before her that she did not have sexual intercourse with the accused and vaginal swab has been sent for chemical examination and there is no finding of semen in the report and there is no evidence for penetrative sexual assault as stated by the prosecution. The learned counsel 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 has been in incarceration since . Thus, he prayed for suspension of sentence till the disposal of this Criminal appeal.

5. Heard the learned counsel for the petitioner and learned Additional



Public Prosecutor and perused the complaint, FIR and evidence of victim girl and other material evidence available on record.

6. On a perusal of the prosecution evidence, it is noticed that the victim in her evidence admitted that she had love affair with the accused person and further P.W.7 Dr.Thiruvankateswari in her evidence has deposed that the victim had stated that she did not have sexual intercourse with the accused person and the semen test is also negative. Therefore, 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.

7. 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 his 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



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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.

26.04.2023

vrc

To

1. The Additional Special Court for Exclusive Trial of Cases under POCSO Act, [Mahalir Neethimandram] Allikulam, Chennai - 600 003.
2. The Inspector of Police,  
W.4 All Women Police Station,  
Kilpauk, Chennai – 600 010.
3. The Public Prosecutor, High Court, Madras.
4. The Superintendent, Central Prison – 1 [Convict],  
Puzhal, Chennai.



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**V.SIVAGNANAM, J.**

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