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Crl.M.P.No.1891 of 2023 in Crl.A.No.1172 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.M.P.No.1891 of 2023

in

Crl.A.No.1172 of 2023

Sakthivel

... Petitioner

/vs/

The Inspector of Police,
Erumapatti Police Station,
Namakkal District.
Crime No.332 of 2016

.. Respondent

Prayer : Criminal Miscellaneous Petition filed under section 389(1) of Cr.P.C., to suspend the sentence imposed against the petitioner on 1.11.2021 in Special C.C.No.1 of 2017, on the file of the Court of Sessions (Fast Track Mahila), Namakkal and release the petitioner on bail, pending disposal of the appeal.

For Petitioner ... Mr. P. Pugalenthir

For Respondent ... Mr.A.Gokulakrishnan
Addl. Public Prosecutor



ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence imposed against the petitioner on 1.11.2021 in Special C.C.No.1 of 2017, on the file of the Court of Sessions (Fast Track Mahila), Namakkal and release the petitioner on bail, pending disposal of the appeal.

2. The petitioner, who is the A1 in Special C.C.No.1 of 2017 is convicted and sentenced by the trial court, by its judgment dated 1.11.2021 as follows;

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
A1	U/s.366(A) IPC	To undergo 10 years RI and a fine of Rs.5,000/-, in default in payment of fine, to undergo SI for a period of 6 months.
	U/s.4(2) and 3 of POCSO Act	To undergo 20 years RI and a fine of Rs.10,000/-, in default in payment of fine, to undergo 6 months SI
		Acquitted from the charges u/s.366(A)IPC, 9 PCM Act, 2006, 5(1) of POCSO Act and 366(A) r/w.114 IPC,
The sentence of imprisonments imposed on the petitioner were ordered to run concurrently		



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3. Aggrieved over the judgment of conviction and sentence imposed on the petitioner in Special C.C.No.1 of 2017, 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. According to the prosecution case, the petitioner has kidnapped and sexually assaulted two victim girls. In order to prove the prosecution case, the two victim girls viz, PW2 and PW4 were examined, but PW4 did not support the prosecution case. In the circumstances, there are arguable points in favour of the petitioner and the petitioner has every chance to succeed in this Criminal appeal. He further submitted that he married one of the victim girls viz, PW2. The accused is in judicial custody from 14.06.2020 onwards, due to which, the family of the petitioner is suffering. Thus, he prayed for suspension of sentence till the disposal of this Criminal appeal.

5. The learned Additional Public Prosecutor appearing for the respondent submitted that the petitioner has committed sexual assault on the two victim girls. He married one victim girl, that too, a minor girl. Though,



in order to safeguard the petitioner, PW4-victim girl did not support the prosecution case, PW2-victim girl gave her evidence against the petitioner. Thus, the sentence imposed against the petitioner need not be suspended and pleaded to dismiss this petition.

6. Heard learned counsel for the petitioner and the learned Addl. Public Prosecutor appearing for the respondent and perused the impugned order and entire material evidence on record.

7. It is the case of the prosecution that the petitioner while working in brick kiln in Palani, sexually assaulted two minor victim girls by inducing them that he would marry them. Thereafter, he married one of the victim girls PW2. On perusal of records, the fact reveals that the accused was arrested and remanded to judicial custody from 30.09.2016 and upto 15.11.2017, he has been in custody, thereafter, he was released on bail. Subsequently, on 14.06.2020, he was arrested and remanded to judicial custody and from that date onwards, he is suffering incarceration. Considering the fact that one of the victim girls is not supporting prosecution case and only one victim girl is supporting the prosecution case and he also married one of the victim girls, this court is of the view that the



petitioner is having arguable point and 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 facts and circumstances of the case, nature of the offence, evidence of prosecution case and the period of detention undergone by the petitioner, this Court is inclined to grant the petitioner the relief of suspension of sentence and bail till the disposal of appeal.

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, to the satisfaction of the Court of Sessions (Fast Track Mahila), Namakkal.
- (ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bonds and the abovesaid 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.

13.03.2023

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To

- 1.The Court of Sessions (Fast Track Mahila), Namakkal.
2. The Inspector of Police,
Erumapatti Police Station,
Namakkal 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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