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Crl.M.P.No.1974 of 2023 in Crl.A.No.1053 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.M.P.No.1974 of 2023

in

Crl.A.No.1053 of 2022

O. Ajith

... Petitioner

/vs/

1. The State, represented by
the Inspector of Police,
Tiruppur North Police Station,
Tiruppur District.

2. S.Rajeswari
Respondents

..

Prayer : Criminal Miscellaneous Petition filed under section 389(1) of Cr.P.C., to suspend the execution of the sentence dated 28.04.2022 passed in Spl.S.C.No.43 of 2020 against the petitioner by the District Sessions Court cum Fast Track Mahila Court, Tiruppur, dated 28.04.2020 and the appellant/sole accused ws in judicial custody dated 28.4.2022 in Central Prison, Madurai, pending disposal of the appeal.

For Petitioner	...	Mr. A.D.Ganeshamoorthi
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.S.C.No.43 of 2020, dated 28.04.2022



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.S.C.No.43 of 2020 is convicted and sentenced by the trial court, by its judgment dated 28.04.2022 as follows;

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Sole accused	U/s.5(1) r/w.6 of POCSO Act, 2012	To undergo 20 years RI and a fine of Rs.10,000/-, in default in payment of fine, to undergo 1 year RI
	U/s.366 IPC	To undergo 10 years RI and a fine of Rs.10,000/-, in default in payment of fine, to undergo 6 months RI
	U/s.9 of Prohibition of Child Marriage Act, 2006	To undergo 2 years RI, and a fine of Rs.5,000/-, in default in payment of fine, to undergo 3 months RI

The sentences of imprisonments were ordered to run concurrently.

The total fine amount of Rs.25,000/- was ordered as compensation to the victim girl after expiry of appeal period.

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 case. The petitioner and the victim girl loved each other and eloped to Theni and thereafter, on the complaint of parents of victim girl, a case has been registered, pursuant to which, she was taken back by her parents. He further contended that before PW3-Doctor who examined her, she had stated that she was not involved in sexual intercourse with the petitioner. Therefore, 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 28.04.2022. Thus, he 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 stating that the consent of the minor girl is immaterial. The accused took her to Theni from her parents' house and had sexual intercourse with her. Further, as per the evidence of victim girl,



the accused on previous occasion also took another girl to the village panchayatdars, like the victim girl.

6. Perused the the evidence of victim girl and the evidence of PW3-Dr.Hemalatha, who examined the victim girl. PW3 in her evidence had stated that during the examination of victim girl, she had stated that the she is not having any sexual intercourse with the accused person and also stated that they are lovers. Further in Ex.P.2-statement recorded under section 164 Cr.P.C., the victim girl had stated that she and the accused are lovers. 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 and there is an arguable case in favour of the appellant. 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 executing a bond for a sum of Rs.10,000/-(Rupees ten thousand only) along with two sureties, each for a like sum,



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to the satisfaction of the Trial Court;

(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 District Sessions Court cum Fast Track Mahila Court, Tiruppur,
2. The Inspector of Police,
Tiruppur North Police Station,
Tiruppur District..
3. The Public Prosecutor, High Court, Madras.
4. The Central Prison, Madurai.



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V.SIVAGNANAM, J.

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