



CrI.MP No.2759 of 2023
CrI.A.No.182 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CrI.M.P.No.2759 of 2023

in

CrI.A.No.182 of 2023

Manoj

... Petitioner

Vs.

The State,
Inspector of Police.,
Rathinapuri Police Station,
Coimbatore City,
(Crime No.1054 of 2019)

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of Criminal Procedure Code to suspend the sentence passed by the learned Principal Sepcial Court (for Exclusive Trial of cases under POCSO Cases) Coimbatore, Coimbatore District in Spl.C.C.No.24 of 2020 dated 26.12.2022 and convicted for the offence under Section 363 of I.P.C. and sentenced to under Rigorous Imprisonment for 5 years and to pay a fine of Rs.5000/- in default to undergo simple imprisonment for 6 months and fine amount already been paid by the appellant and office also issued fine receipt bearing No.7205735 dated 25.12.2022.



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For Petitioner : Mr.E.Kannadasan

For Respondents : Mr.C.E.Pratap
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner passed by the learned Principal Sepcial Court (for Exclusive Trial of cases under POCSO Cases) Coimbatore, Coimbatore District in Spl.C.C.No.24 of 2020 dated 26.12.2022 and convicted for the offence under Section 363 of I.P.C. and enlarge the petitioner on bail, pending disposal of the Criminal Appeal.

2.The learned counsel for the petitioner submitted that the respondent police prosecuted the petitioner/ accused for having committed the offence punishable under Section 363 of I.P.C. r/w. 5(1) r/w.6 of Protection of Children from Sexual Offence Act, 2012 and Section 8(c) r/w.20(b)(ii)(A) of NDPS Act. The case has been filed in Spl.C.C.No.24 of 2020 on the file of the learned Principal Special Court (fro Exclusive Trial of cases under POCSO Cases) Coimbatore.

3.After considering the evidence, the Trial Court found guilty for the



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offence unde Section 363 I.P.C. and convicted and sentence to undergo five years of rigorous imprisonment and to pay a fine of Rs.5,000/- in default of payment of fine to undergo six months simple imprisonment and acquitted for the offences under Section 5(1) r/w. 6 of POCSO Act, 2012 and Section 8(c) r/w 20(b)(ii)(A) of NDPS Act.

4.He further submitted that in this cse, the victim girl, father and mother have not supported the prosecution case and all were treated as hostile. Inspite of no evidence, the Trial Court found the appellant guilty for the offence unde Section 363 I.P.C. and convicted and sentence to undergo five years of rigorous imprisonment and to pay a fine of Rs.5,000/- in default of payment of fine to undergo six months simple imprisonment. There is a argued case in favour of the accused and the accused is in custody from 26.12.2022. Challenging the judgment of conviction and sentence, the petitioner preferred the present Criminal Appeal along with the instant petition, seeking to suspend the sentence of imprisonment.



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5. When the matter was taken up, the learned Govt. Advocate (crl.side) appearing for the respondent submitted that the victim girl went missing. The father and mother who gave the complaint did not support the case of the prosecution and they were treated as hostile by the prosecution and based on the remaining witnesses, the Trial Court has convicted the appellant.

6. I have considered the submissions made on both side and perused the materials available on record.

7. On perusal of the records and the judgment, it is seen that the respondent/ police prosecuted the appellant/ accused for having kidnapping and sexually assaulting the victim girl on 11.11.2019. The respondent/ police prosecuted the accused for having committed the offence of kidnapping and sexual assault upon the victim girl on 11.11.2019, before the Trial Court, the victim girl as well as the father and mother PW1, PW2 and PW3 not supported the case of the prosecution and they were treated by the prosecution as hostile witnesses. The Trial Court found guilt of the offence under Section 363 I.P.C and convicted and sentence to

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undergo five years of rigorous imprisonment and to pay a fine of Rs.5,000/- in default of payment of fine to undergo six months simple imprisonment and found not guilty and acquitted for the offences under Section 5(1) r/w. 6 of POCSO Act, 2012 and Section 8(c) r/w 20(b)(ii)(A) of NDPS Act.

8.Considering the offence and sentence imposed on the petitioner and the submission made by the learned counsel for the petitioner, there is an argued case in favour of the petitioner/ accused and considering the fact that the victim as well as the father and mother not supporting the prosecution case, they were treated as hostile witnesses and this Court is inclined to grant bail to the appellant till the disposal of the Criminal Appeal on the following conditions.

9. Accordingly, the petitioner is ordered to be released on bail 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 Principal



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Sepcial Court (POCSO Cases), Coiombatore.

(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 appear before the Principal Sepcial Court (POCSO Cases), Coiombatore as and when required.

10. The Superintendent, Central Prison, Coimbatore is directed to set the petitioner at liberty, if his further detention is no longer required in connection with any other case or proceedings.

11. The Criminal Miscellaneous Petition is ordered accordingly.

24.02.2023

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To

1.The Principal Sepcial Court
(for Exclusive Trial of cases under POCSO Cases)
Coiombatore, Coimbatore District,

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2. The Superintendent, Central Prison, Coimbatore.
3. State rep. by : Inspector of Police,
Inspector of Police, Rathinapuri Police Station,
Coimbatore City,(Crime No.1054 of 2019)
4. The Public Prosecutor, High Court, Madras.

V.SIVAGNANAM, J.

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