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Crl.M.P.No.3299 of 2023 in Crl.A.No.584 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.M.P.No.3299 of 2023
in Crl.A.No.584 of 2022

Raja @ Rajasekar

... Petitioner

-VS-

The State,
Rep. by Inspector of Police,
Odiansalai Police Station,
Puducherry.

.. Respondent

Prayer: Criminal Miscellaneous Petition filed under section 389(1) of Cr.P.C., to suspend the sentence imposed through order dated 23.12.2021 against the petitioner in Spl.S.C.No.52 of 2019 on the file of the Special Judge Under the POCSO Act, Puducherry and enlarge the petitioner on bail pending disposal of the above appeal.

For Petitioner

... Mr.W.M.Abdul Majeed

For Respondent

... Mr.K.S.Mohandass,
Public Prosecutor (Pondicherry)

**ORDER**

WEB COPY This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence imposed through order dated 23.12.2021 against the petitioner in Spl.S.C.No.52 of 2019 on the file of the Special Judge Under the POCSO Act, Puducherry and enlarge the petitioner on bail pending disposal of the above appeal.

2. The petitioner, who is the sole accused in Spl.S.C.No.52 of 2019 is convicted and sentenced by the trial court, by its judgment dated 23.12.2021 as follows;

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Sole Accused	U/s.366 of IPC	To undergo 5 years RI and a fine of Rs.2,000/-, in default in payment of fine, to undergo 6 months RI.
	U/s.343 of IPC and U/s.6 of POCSO Act, 2012.	To undergo 1 year RI to undergo 10 years RI and a fine of Rs.10,000/-, in default in payment of fine, to undergo 2 years RI.



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3. Aggrieved over the judgment of conviction and sentence imposed on the petitioner/Accused in Spl.S.C.No.52 of 2019, 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 respondent police prosecuted the petitioner for committed offences under Sections 366, 343, 376(3) of IPC and under Section 6 of POCSO Act 2012. The trial Court also convicted and sentenced the petitioner and the petitioner is in custody from 23.12.2021 and in this case all the witnesses became hostile especially P.W.1 and P.W.2 both not supported in the prosecution case. There is no medical evidence in support of the prosecution case. There is arguable point and seeking to suspend the sentence and grant bail.

5. The learned Public Prosecutor (Pondicherry) submitted that after considering the materials available on record, the trial Court convicted the petitioner and objected to suspend the sentence.

6. Heard both sides and perused the impugned judgment and also the entire material evidence available on record.



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7. On perusal of records, it is seen that the petitioner / accused in Spl.S.C.No.52 of 2019 on the file of Special Judge under the POCSO Act, Puducherry, was prosecuted by the respondent police for the offences under Sections 366, 343, 376(3) of IPC and under Section 6 of POCSO Act 2012. Further in para 53 of the judgment it is recorded by the trial Court that P.W.1 and P.W.2 became hostile and not supporting to the prosecution case. The medical evidence P.W.12 Dr.Agalya is also evidencing that there is no possibility of sexual intercourse. In these circumstances, there is an arguable point on the side of the appellant / accused, who is in custody from 23.12.2021. Considering the nature of the case and the evidence, this Court is inclined to suspend the sentence and bail is granted.

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 Special Court for Exclusive Trial of Cases under POCSO Act, Puducherry.
- (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 trial Court as and when required.

07.03.2023

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To

- 1.The Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore.
2. The Inspector of Police,
Odiansalai Police Station,
Puducherry.
3. The Public Prosecutor, High Court, Madras.
4. The Superintendent, Sub Jail,
Pondicherry.



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V.SIVAGNANAM, J.

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