



WEB COPY



Crl.M.P.No.3104 of 2023 in Crl.A.No.216 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.M.P.No.3104 of 2023

in

Crl.A.No.216 of 2023

S.Ganesan

... Petitioner

Vs

1. The State,
rep. by The Inspector of Police,
Periyanaickenpalayam Police Station,
Coimbatore
(Crime No.231 of 2017)

2. Palanisamy

... Respondents

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence and conviction imposed on the petitioner by the Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore in Spl.C.C.No.21 of 2019 by Judgment dated 09.06.2022 and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner

: Mr.B.Mohamed Ismail

For R1

: Mr.A.Gokulakrishnan

Additional Public Prosecutor

For R2

: Service awaited



Crl.M.P.No.3104 of 2023 in Crl.A.No.216 of 2023

ORDER

This petition has been filed to suspend the sentence and conviction imposed on the petitioner by the Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore in Spl.C.C.No.21 of 2019 by Judgment dated 09.06.2022 and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

2. The Trial Court, vide its judgment dated 09.06.2022, convicted the accused for the offence under Sections 363 of IPC and Section 5(1) r/w 6 of POCSO Act and sentenced him as under:

Conviction under Section	Sentence
363 IPC	5 years Rigorous imprisonment with Rs.5,000/- fine - in default of payment of fine to undergo six months simple imprisonment
Section 5(1) r/w 6 of POCSO Act	10 years Rigorous imprisonment with Rs.20,000/- fine – in default payment of fine to undergo further one year simple imprisonment.

3. Challenging the conviction and sentence slapped by the Trial Court, the petitioner is before this Court.

4. The learned counsel for the petitioner submitted that the police



prosecuted the petitioner/appellant in having committed an offences under Sections 366 of IPC and Section 5(1) r/w 6 of POCSO Act, 2012 and Section 9 of Prohibition of Child Marriage At, 2006. After trial, the Trial Court found the petitioner guilty and convicted and sentenced him to undergo 5 years Rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment for the offence under Section 363 of CPC and to undergo 10 years Rigorous imprisonment and to pay a fine of Rs.20,000/-, in default to undergo one year simple imprisonment for the offence under Section 5(1) r/w 6 of POCSO Act, 2012. He further contended that the victim girl has not supported the case of the prosecution and she was treated as hostile witness. In such circumstances, there are arguable points in this Appeal. He further submitted that the petitioner is under custody from 09.06.2022 and hence, prayed for suspension of sentence.

5. When the matter is taken up for hearing, the learned Additional Public Prosecutor appearing for the 1st respondent fairly submitted that the victim girl has not supported the prosecution and she was treated as hostile.

6. Heard the learned counsel appearing for the petitioner and the



Crl.M.P.No.3104 of 2023 in Crl.A.No.216 of 2023

learned Additional Public Prosecutor and perused the impugned judgment and the materials available on record.

7. A perusal of the impugned Judgment and the deposition of the victim girl, it is noticed that the victim girl has not supported the prosecution case and she was treated by the prosecution as hostile witness and it is an arguable point for the petitioner and further the petitioner is in custody from 09.06.2022.

8. Taking into consideration of the above submission of the learned counsels appearing on both sides, this Court finds that the petitioner has substantial grounds in this Criminal Revision Case, which requires detailed appraisal. Therefore, this Court is of the view that the petitioner is entitled to the relief of suspension of sentence.

9. Accordingly, it is ordered as follows.

(i) The substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner ***shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction***



Crl.M.P.No.3104 of 2023 in Crl.A.No.216 of 2023

*of the learned Special Court for Exclusive Trial of Cases under
POCSO Act, Coimbatore.*

(ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Trial Court may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

(iii) The petitioner shall appear before the Trial Court, as and when required.

29.03.2023

Lpp

2/2

To

1. The Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore.

2. The Superintendent, Central Prison, Coimbatore.

3. The Inspector of Police,
Periyanaickenpalayam Police Station,
Coimbatore

4. The Public Prosecutor,
High Court of Madras, Chennai.



WEB COPY



Crl.M.P.No.3104 of 2023 in Crl.A.No.216 of 2023

V.SIVAGNANAM, J.,

Lpp

Crl.M.P.No.3104 of 2023
in
Crl.A.No.216 of 2023

29.03.2023