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Crl.MP No.3389 of 2023 in Crl.A.No.248 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.M.P.No.3389 of 2023
in Crl.A.No.248 of 2023

Selvaraj

... Petitioner

Vs.

The State Rep. by
The Inspector of Police,
Kannankurichi Police Station,
Salem City.
(Crime No.40 of 2019)

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of Criminal Procedure Code to suspend the sentence imposed on the petitioner in Spl.S.C.No.9 of 2020 dated 31.05.2022 on the file of Sessions Judge, Special Court for POCSO cases, Salem and enlarge the petitioner on bail pending disposal of main Criminal Appeal.



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For Petitioner : Mr.M.Subash
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence imposed on the petitioner in Spl.S.C.No.9 of 2020 dated 31.05.2022 on the file of Sessions Judge, Special Court for POCSO cases, Salem and enlarge the petitioner on bail pending disposal of main Criminal Appeal.

2. The petitioner, who is the sole accused in Spl.S.C.No.9 of 2020 is convicted and sentenced by the trial court, by its judgment dated 31.05.2022 as follows;

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Sole Accused	U/s.9(m) r/w 10 of POCSO Act.	To undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.15,000/-, in default to undergo further



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<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
		period of six months of SI.
		Acquitted from the charge u/s.294(b) IPC
The sentence of imprisonments imposed on the petitioner was ordered to run concurrently		

3. Aggrieved over the judgment of conviction and sentence imposed on the petitioner in Spl.S.C.No.9 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 petitioner was prosecuted by the respondent police for the offences under Section 9(m) r/w 10 of POCSO Act and under Section 294(b) of IPC. After trial he was convicted under Section 9(m) r/w 10 of POCSO Act and is sentenced to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.15,000/- in default to undergo further period of six months of simple imprisonment. The allegation against the petitioner is that the victim child was went to



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petty shop at that time the appellant forcibly took her in his home and sexually assaulted the victim girl in an aggravated manner. But in this case, Doctor Arulselvan was examined as P.W.7. P.W.6 Doctor Priyadharshini, she examined and depose that she did not find any injuries on the private part of the victim girl, to that effect she noted in the medical report (Ex.P7). It is arguable point in this case. Thus, he prayed for suspension of sentence till the disposal of this Criminal appeal.

5. The learned Additional Public Prosecutor (Pondicherry) submitted that as per the evidence of P.W.6 Dr.Priyadharshini no outward injuries on the private part of the victim girl. Hence, he objected to suspend the sentence.

6. Heard learned counsel for the petitioner and the learned Additional Public Prosecutor (Pondicherry) appearing for the respondent.



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7. Considering the nature of the offence and the allegation levelled against the petitioner and the absence of injuries on the private part of the victim girl and the accused is in custody from 31.05.2022, this Court is of the view that the petitioner is entitled to the relief of suspension of sentence.

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 Sessions Judge, Special Court for POCSO Cases, Salem.

(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.

08.03.2023
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To

- 1.The Inspector of Police,
Kannankurichi Police Station,
Salem City.
- 2.The Superintendent, Central Prison,
Coimbatore.
- 3.The Public Prosecutor, High Court, Madras.



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V.SIVAGNANAM, J.

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