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Crl.M.P.No.4172 of 2023 in Crl.A.No.304 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.03.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.M.P.No.4172 of 2023

in

Crl.A.No.304 of 2023

Karuppasamy

... Petitioner

/vs/

The State, represented by
the Inspector of Police,
AWPS, Perur, Coimbatore
(Cr.No.04/2018)

.. Respondent

Prayer : Criminal Miscellaneous Petition filed under section 389(1) of Cr.P.C., to suspend the sentence imposed on the petitioner by the Spl.C.C.No.36 of 2019 on the file of Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, dated 12.08.2022 and enlarge the petitioner on bail, pending disposal of the above criminal appeal.

For Petitioner ... Mr.R.Sankarasubbu

For Respondent ... Mr.A. Gokulakrishnan
APP

ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence imposed on the petitioner by the Spl.C.C.No.36 of 2019 on the file of Special Court for Exclusive Trial of Cases under POCSO



Act, Coimbatore, dated 12.08.2022 and enlarge the petitioner on bail, pending disposal of the above criminal appeal.

2. The petitioner, who is the sole accused in Spl.C.C.No.36 of 2019 is convicted and sentenced by the trial court, by its judgment dated 12.08.2022 as follows;

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Sole accused	U/s.363 IPC	To undergo 5 years RI and to pay a fine of Rs.5000/-, in default in payment of fine, to undergo 6 months SI
	U/s.5(1) r/w.6 of POCSO Act, 2012	To undergo 10 years RI and to pay a fine of Rs.20,000/-, in default in payment of fine, to undergo further one year SI
		Acquitted from the charge u/s.9 of Prohibition of Child Marriage Act, 2006.

The sentence of imprisonments were ordered to run concurrently.

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

3. Aggrieved over the judgment of conviction and sentence imposed on the petitioner in Spl.C.C.No.36 of 2022, 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 victim girl is having love affair with the petitioner and she voluntarily eloped with the petitioner on her own accord and married him. Thereafter, based on the complaint lodged by her father, the petitioner was prosecuted by the respondent police and the same ended in conviction and sentence on the petitioner. Therefore, there are arguable points in this appeal and the petitioner has every chance to succeed in this appeal. Further, the petitioner is under judicial custody from 12.08.2022. Thus, he prayed for suspension of sentence till the disposal of this Criminal appeal.

5. The learned Addl. Public Prosecutor appearing for the respondent, on the other hand, supporting the impugned order, objected to suspend the sentence of imprisonment imposed on the petitioner. However, he fairly conceded that in her statement recorded under section 164 Cr.P.C., she had stated that she had love affair with the petitioner and went along with him voluntarily on her own accord.



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6. Heard the learned counsel for the petitioner and the learned Addl. Public Prosecutor appearing for the respondent and perused the impugned order and materials available on record.

7. On perusal of the impugned judgment and the statement recorded u/s.164 of Cr.P.C., of the victim girl, it is noticed that the victim girl was having love affair with the petitioner and she herself voluntarily went along with the petitioner to Palani. Considering the evidence and nature of the accusation levelled against the petitioner, this court is of the view that the petitioner has raised substantial grounds in the appeal which require detailed appraisal and there are arguable points in favour of the accused. Further, the appeal is not likely to be taken up in the near future and the petitioner is under incarceration from 12.08.2022. Therefore, this Court is of the view that the petitioner is entitled to the relief of suspension of sentence and bail.

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,



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to the satisfaction of the 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 bonds and the abovesaid 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.

27.03.2023

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To

- 1.The Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore,
2. The Inspector of Police,
AWPS, Perur, Coimbatore
- 3.The Public Prosecutor, High Court, Madras.
4. The Superintendent, Central Prison,
Coimbatore.

V.SIVAGNANAM, J.



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