



Crl.M.P.No.3760 of 2023 in Crl.A.No.1156 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.03.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.M.P.No.3760 of 2023

in

Crl.A.No.1156 of 2023

P. Krishnasamy

... Petitioner

/vs/

The State, represented by
The Inspector of Police,
All Women Police Station (south)
Tiruppur District
(Cr.No.05/2020)

... Respondent

Prayer : Criminal Miscellaneous Petition filed under section 389(1) of Cr.P.C., to suspend the sentence imposed against the petitioner in Spl.S.C.No.37/2020, dated 17.12.2021, convicting the appellant u/s.9(m) r/w.10 of POCSO Act, 2012 by Mahila Court Judge , Tirupur and enlarge the petitioner on bail, pending disposal of the appeal.

For Petitioner

... Mr. C.D.Johnson

For Respondent

... Mr. A. Gokulakrishnan
Addl. Public Prosecutor



ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence of imprisonment imposed in the judgment dated 17.12.2021 made in Spl.S.C.No.37 of 2020 on the file of the Mahila Court, Tiruppur and enlarge the petitioner on bail, pending disposal of the above Criminal Appeal.

2. The petitioner, who is the sole accused in Spl.S.C.No.37 of 2020 is convicted and sentenced by the trial court, by its judgment dated 17.12.2021 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, 2012	To undergo 7 years RI and a fine of Rs.10,000/-, in default in payment of fine, to undergo RI for a period of 6 months.
		The fine amount of Rs.10,000/- was ordered to be paid to the victim girl after expiry of the appeal period

3. Aggrieved over the judgment of conviction and sentence imposed on the petitioner in Spl.S.C.No.37 of 2020, the petitioner has filed the present criminal appeal, along with the instant miscellaneous petition, seeking suspension of sentence and bail.



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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 only allegation against the petitioner is that he touched the victim girl with sexual intention, but there is no medical evidence to support the allegations levelled by the prosecution against the petitioner since the victim girl was not subjected to medical examination by a Doctor. Thus, there are arguable points in this appeal and the petitioner has every chance to succeed in this Criminal appeal. He further submitted that the petitioner is aged 61 years and he is under judicial custody from 17.12.2021. Thus, he prayed for suspension of sentence till the disposal of this Criminal appeal.

5. The learned Addl. Public Prosecutor appearing for the respondent objected to suspend the sentence, however, he fairly conceded that the victim girl was not subjected to medical examination by a Doctor and the allegation levelled against the petitioner is that he touched the victim girl sexually.

6. Considered the arguments advanced on either side and perused the impugned order and entire material evidence available on record.



7. On perusal of records, it reveals that, as per the prosecution case, the petitioner touched the private parts of the victim girl with sexual intention. According to the learned counsel for the petitioner, the allegation against the petitioner that he touched the victim girl with sexual intention was not proved by the prosecution by subjecting the victim girl to medical examination by a Doctor. In the circumstances, the petitioner has raised substantial grounds in the appeal which require detailed appraisal and there are arguable points in this appeal. Further, the appeal is not likely to be taken up in the near future. Considering the nature of the offence and the petitioner is an old man, aged 61 years and he is under incarceration from 17.12.2021, 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, to the satisfaction of the Mahila Court Judge, Tiruppur.



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(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.

16.03.2023

msr

To

- 1.The Mahila Court Judge , Tirupur.
2. The Inspector of Police,
All Women Police Station (South),
Tiruppur District.
- 3.The Public Prosecutor, High Court, Madras.
4. The Superintendent, Central Prison,
Coimbatore.



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V.SIVAGNANAM, J.

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