



WEB COPY



Crl.M.P.No.4288 of 2023 in Crl.A.No.315 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.M.P.No.4288 of 2023

in

Crl.A.No.315 of 2023

Velayutham

.. Petitioner

/vs/

The State represented by
the Inspector of Police,
Mettupalayam Police Station,
Puducherry.

.. Respondent

Prayer : Criminal Miscellaneous Petition filed under section 389(1) of Cr.P.C., to suspend the order of conviction order passed by the learned Special Judge (under the POCSO Act-2012) Principal Sessions Judge, Puucherry in Special Sessions Case No.5 of 2021, dated 23.02.2023 and enlarge the petitioner on bail, pending disposal of the appeal.

For Petitioner ... Mr. R. Balavijayan

For Respondent ... Mr.K.S.Mohandoss,
Public Prosecutor (Puducherry)



ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence of imprisonment imposed in the judgment dated 23.02.2023 made in Special Sessions Case No.5 of 2021 on the file of the Special Judge (under the POCSO Act-2012), Principal Sessions Court, Puducherry and enlarge the petitioner on bail, pending disposal of the above Criminal Appeal.

2. The petitioner, who is the sole accused in Special Sessions Case No.5 of 2021 is convicted and sentenced by the trial court, by its judgment dated 23.02.2023 as follows;

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Sole accused	U/s.10 of POCSO Act, 2012	To undergo 5 years RI and a fine of Rs.1000/-, in default in payment of fine, to undergo RI for a period of one year.
	U/s.12 of POCSO Act, 2012	To undergo 1 year RI and to pay a fine of Rs.1000/-, in default in payment of fine, to undergo 3 months RI
	U/s.323 of IPC	To undergo SI for two months
The sentence of imprisonments imposed on the petitioner were ordered to run concurrently		



3. Aggrieved over the judgment of conviction and sentence imposed on the petitioner by the trial court, 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 evidence of PWs.1 and 3 are concocted one. After filing divorce application against the petitioner, PW1 instigated her daughter PW2 to depose against her father. Hence the evidence of PW2 being a tutored evidence, cannot be relied upon. Further, the evidence of PW3-mother of PW1 also cannot be relied upon. The trial court, without considering the above aspect, erroneously convicted and sentenced the petitioner. Thus, he submitted that there are arguable points in this appeal and the petitioner has every chance to succeed in this Criminal appeal. Thus, he prayed for suspension of sentence till the disposal of this Criminal appeal.

5. The learned Public Prosecutor (Puducherry) objected to suspend the sentence and grant bail to the petitioner and submitted that at the time of deposing before the trial court, the victim girl is aged 14 years. In her



evidence, she had clearly deposed about the activities of her own father and hence, there is no reason to disbelieve the evidence of PW2. Thus he seeks for dismissal of this petition.

6. Heard learned counsel for the petitioner and the learned Public Prosecutor (Puducherry) appearing for the respondent and perused the impugned judgment and materials on record and the prosecution evidence.

7. On perusal of records, the fact reveals that the petitioner has sexually abused his own daughter, during her tender age. Considering the gravity of the offence and the nature of allegations levelled against him, this court finds no reason to suspend the sentence imposed on the petitioner at present. Hence, this petition is dismissed as devoid of merits.

03.04.2023

msr

To

- 1.The Principal Sessions Judge
(Under the POCSO Act, 2012),
Puducherry.
2. The Inspector of Police,
Mettupalayam Police Station,
Puducherry.
- 3.The Public Prosecutor,
Puducherry.



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V.SIVAGNANAM, J.

msr

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