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Crl.M.P.No.4438 of 2023 in Crl.A.No.337 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2023

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THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

Crl.M.P.No.4438 of 2023

in

Crl.A.No.337 of 2023

Vijayan

... Petitioner

Vs.

State Rep. by
The Inspector of Police,
All Women Police Station, East
Coimbatore City.
(Crime No.12 of 2020)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence imposed in Spl.C.C.No.5/2021 on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, whereby, convicting the appellant and sentenced to undergo Rigorous Imprisonment for term of one year and to pay a fine of Rs.1,000/-, in default of payment of fine to undergo one month Simple Imprisonment and release the petitioner/appellant on bail pending disposal of the above appeal.



Crl.M.P.No.4438 of 2023 in Crl.A.No.337 of 2023

For Petitioner : Mr.T.Panchatsaram
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence of imprisonment imposed on the petitioner in Spl.C.C.No.5/2021, dated 31.01.2023 on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, pending disposal of the above appeal.

2. The Trial court, by its judgment dated 31.01.2023 made in Spl.C.C.No.5/2021, acquitted the petitioner for the offence under Section 9(i), (1),(n) r/w.10, 11(i) r/w.12 of the POCSO Act, 2012 and Section 506(i) I.P.C., however, convicted him for the offence punishable under Section 323 I.P.C., and sentenced him as under:



Crl.M.P.No.4438 of 2023 in Crl.A.No.337 of 2023

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Sole accused	U/s.323 of IPC	To undergo RI for 1 year and to pay a fine of Rs.1,000/-, in default in payment, to undergo further one month S.I. for each count.

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 there are arguable points in this Criminal Appeal and hence, prayed for suspension of sentence.

5. The learned Additional Public Prosecutor appearing for the respondent submitted that the victim girl has not supported the prosecution case which is charged under POCSO Act. Therefore, the Trial Court based on the evidence, convicted the accused under Section 323 of I.P.C., and imposed one year R.I., and also fine of Rs.1,000/-. Fine amount has been paid.

6. Heard the learned Government Advocate(Crl. Side) appearing for



Crl.M.P.No.4438 of 2023 in Crl.A.No.337 of 2023

the respondent and perused the impugned judgment and the materials on record.

7. 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 Appeal, which require detailed appraisal. Therefore, this Court is of the view that the petitioner is entitled to the relief of suspension of sentence.

8. Accordingly, it is ordered as follows.

(i) The substantive sentence of imprisonment alone is suspended and the petitioner shall surrender before the Trial Court within two weeks from the date of receipt of a copy of this order and on such surrender, the petitioner is ordered to be released on bail on *executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the learned Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore.*



Crl.M.P.No.4438 of 2023 in Crl.A.No.337 of 2023

WEB COPY

(ii) The petitioner and the sureties shall affix his 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.

28.03.2023

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To

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

2. The Inspector of Police,
All Women Police Station, East
Coimbatore City.

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



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Crl.M.P.No.4438 of 2023 in Crl.A.No.337 of 2023

V.SIVAGNANAM, J.,

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Crl.A.No.337 of 2023

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