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Crl.M.P.No.6363 of 2023 in Crl.A.No.515 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.M.P.No.6363 of 2023

in

Crl.A.No.515 of 2023

Raja

...
/vs/

Petitioner

State Rep. by

The Assistant Commissioner of Police,
Saidapet Range, W-20 All Women Police Station,
Saidapet, Chennai - 15.

...

Respondent

Prayer : Criminal Miscellaneous Petition has been filed under section 389 [1] of Cr.P.C. to suspend the sentence to undergo imprisonment for 5 years and to pay fine of Rs.25,000/- for the offence under section 10 of POCSO Act, in default of payment of fine thereof to undergo further period of 3 months SI and sentence to undergo for 5 years imprisonment with fine of Rs.25,000/- in default to undergo simple imprisonment 3 months for offence under section 366 of IPC and sentence to undergo imprisonment for 6 months for the offence under section 342 of IPC passed by the judgement dated 24.02.2023 in Special S.C.No.111 of 2020 by the learned Special Court for Exclusive Trial Cases under POCSO Act, Chennai and enlarge the petitioner on bail.

For Petitioner

...

Mr.M.Annadurai

For Respondent

...

Mr.A.Gokulakrishnan
Additional Public Prosecutor

**ORDER**

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence dated 24.02.2023 imposed on the petitioner in Special S.C.No.111 of 2020 on the file of the Special Court for Exclusive Trial Cases under POCSO Act, Chennai and enlarge the petitioner on bail, pending disposal of the above appeal.

2.The petitioner, who is the sole accused, has been prosecuted by the respondent police for the offences under section 10 of Protection of Children from Sexual Offences Act 2012 and sections 366, 342 of IPC and Section 3[1][w][i] of Schedule Castes and the Scheduled Tribes [Prevention of Atrocities Act, 1989 in Special S.C.No.111 of 2020 and after trial, the petitioner is convicted and sentenced by the trial court, by its judgment dated 24.02.2023 as follows:

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Sole accused	U/s.10 of POCSO Act	To undergo 5 years imprisonment with a fine of Rs.25,000/- in default to undergo simple imprisonment for 3 months
	366 of IPC	To undergo 5 years imprisonment with a fine of Rs.25,000/- in default to undergo simple imprisonment for 3 months
	342 of IPC	To undergo 6 months imprisonment

The period of detention already undergone by the accused from 11.02.2019



to 16.05.2019 is ordered to be set off under section 428 Cr.P.C. However, the petitioner was found not guilty under section 3[1] [w] [i] of SC/ST [POA Act 1989 and acquitted from the above charge.

3. Aggrieved over the judgment of conviction and sentence imposed on the petitioner in Special S.C.No.111 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 victim was not examined by any doctor after the alleged occurrence and the allegation against the accused is bad sexual touch. There are a lot of contradictions in the evidence of prosecution witnesses and there are arguable points in favour of the petitioner. Thus, he prayed for suspension of sentence till the disposal of this Criminal appeal.

5.The learned Additional Public Prosecutor appearing for the respondent, supporting the impugned judgment, objected to suspend the sentence imposed on the petitioner.

6.Heard the learned counsel for the petitioner and learned Additional



Public Prosecutor and perused the complaint, FIR and evidence of victim girl and other material evidence available on record.

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7. On a perusal of the impugned judgment, it is noticed that the victim has not been examined by any doctor after the alleged occurrence and there are contradictions in the evidence prosecution witnesses, particularly, P.W.1 to P.W.3. Hence, this Court is of the view that the petitioner has raised substantial grounds in the appeal which require detailed appraisal. Further, the appeal is not likely to be taken up in the near future. In such view of the matter, 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 his 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 Special Court for Exclusive Trial Cases under POCSO Act, Chennai;



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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.

Index : Yes/No

Internet: Yes/No

sms

28.04.2023

Note: Issue order copy on 03.05.2023

To

1. The Sessions Judge,
Special Court for Exclusive Trial Cases
under POCSO Act, Chennai
2. The Assistant Commissioner of Police,
Saidapet Range, W-20 All Women Police Station,
Saidapet, Chennai - 15.
3. The Superintendent, Central Prison, Puzhal, Chennai.
4. The Public Prosecutor, High Court, Madras.



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V.SIVAGNANAM, J.

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