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Crl.M.P.No.5556 of 2023 in Crl.A.No.443 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.M.P.No.5556 of 2023

in

Crl.A.No.443 of 2023

S. Murugan

... Petitioner

/vs/

1.The Inspector of Police,
All Women Police Station (North)
Thiruppur,
Thiruppur District.
Crime No.7 of 2022

2. Seetha,
W/o.Sankar,
Avinankudi Village,
Thittakudi Taluk,
Cuddalore District

.. Respondents

Prayer : Criminal Miscellaneous Petition filed under section 389(1) and 439 of Cr.P.C., to suspend the sentence of imprisonment passed in the judgment dated 03.02.2023 passed in Spl.S.C.No.49 of 2022 by the Mahila Court at Thiruppur and enlarge the petitioner on bail pending disposal of the above criminal appeal.

For Petitioner ... Mr. C.D.Sugumar

For Respondents ... Mr.R. Vinoth Raja, GA (crl.side)-R1
R2- Notice sent, none appeared



ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence of imprisonment imposed in the judgment dated 03.02.2023 made in Spl.S.C.No.49 of 2022 on the file of 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.49 of 2022 is convicted and sentenced by the trial court, by its judgment dated 03.02.2023 as follows;

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Sole accused	U/s.3(a) r/w.4(2) of POCSO Act, 2012	To undergo 20 years RI and a fine of Rs.5,000/-, in default in payment of fine, to undergo RI for a period of 6 months.
		Acquitted from the charge u/s.3(1)(w)(i) of SC/ST (POA) Act, 2015
It was ordered to utilise the fine amount for medical expenses and rehabilitation of the victim girl		

3. Aggrieved over the judgment of conviction and sentence imposed on the petitioner in Spl.S.C.No. 49 of 2022, 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 respondent police prosecuted the petitioner for the offence under sections 3(a) r/w.4(2) of POCSO Act, 2012 and 3(1)(w)(i) of SC/ST (POA) Act, 2015, but the trial court found him guilty only under section 3(a) r/w.4(2) of POCSO Act, 2012 and acquitted him from the charge levelled under section 3(1)(w)(i) of SC/ST (POA) Act, 2015 and he was accordingly convicted and sentenced as stated above. He further contended that as per the evidence of victim and the evidence of Doctor, who examined the victim girl, there is no penetrative sexual assault. In the circumstances, the trial court without considering the evidence in a proper perspective, convicted the petitioner for having committed penetrative sexual assault on the victim. Therefore, it is unsustainable. Thus, there are arguable points in this appeal and the petitioner has every chance to succeed in this Criminal appeal. Further, he contended that the petitioner is in judicial custody from 20.04.2022. Hence, he prayed for suspension of sentence till the disposal of this Criminal appeal.

5. The learned Govt. Advocate (crl.side) appearing for the first respondent supporting the impugned order, objected to grant suspension of



sentence, but conceded that there is no penetrative sexual assault upon the victim girl as per the evidence of the victim girl and the Doctor who examined the victim girl.

6. Though notice served on the 2nd respondent/defacto complainant and her name being printed in the cause list, there is no representation for her either in person or through counsel today, when the matter is called. Hence, the 2nd respondent called absent.

7. Heard the learned counsel for the petitioner and the learned Govt. Advocate (crl.side) appearing for the first respondent.

8. On perusal of records, it is seen that the trial court convicted the petitioner for having committed penetrative sexual assault upon the victim girl, without any medical evidence. Considering the nature of the allegation and considering the evidence of victim girl and the Doctor who examined the victim girl, 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. Considering the above aspects and taking note of the fact that the petitioner is in judicial custody from



20.04.2022, this court is inclined to grant suspension of sentence to the petitioner.

9. 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, Thiruppur.
- (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.

30.06.2023

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To

1. Thhe Mahila Court at Thiruppur
2. The The Inspector of Police,
All Women Police Station (North)
Thiruppur,
Thiruppur 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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