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Crl.M.P.No.5787 of 2023 in Crl.A.No.464 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 20.06.2023**

**CORAM**

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

**Crl.M.P.No.5787 of 2023**

**in**

**Crl.A.No.464 of 2023**

Sathish

... Petitioner

/vs/

The Inspector of Police,  
Bhavani All Women Police Station,  
Erode District.  
Crime No.8 of 2021

.. Respondent

**Prayer :** Criminal Miscellaneous Petition filed under section 389(1) of Cr.P.C., to suspend the sentence of imprisonment dated 20.02.2023 made in Spl.S.C.No.63 of 2021 on the file of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Erode and to enlarge the petitioner on bail, pending disposal of the above Criminal Appeal.

For Petitioner ... Mr. R. Prabakar

For Respondent ... Mr.R. Vinoth Raja, GA (crl.side)

**ORDER**

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence of imprisonment imposed in the judgment dated 20.02.2023 made in Spl.S.C.No.63 of 2021 on the file of the learned Sessions



Judge, Magalir Neethimandram (Fast Track Mahila Court), Erode 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.63 of 2021 is  
convicted and sentenced by the trial court, by its judgment dated 20.02.2023  
as follows;

| <b><i>Petitioner's Rank</i></b> | <b><i>Provision under which convicted</i></b>                                          | <b><i>Sentence</i></b>                                                                                                  |
|---------------------------------|----------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|
| Sole accused                    | U/s.5(1) punishable u/s.6 of the Protection of Children from Sexual Offences Act, 2012 | To undergo 20 years RI and a fine of Rs.5,000/-, in default in payment of fine, to undergo SI for a period of 3 months. |

3. Aggrieved over the judgment of conviction and sentence imposed  
on the petitioner in Spl.S.C.No.63 of 2021, 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 victim girl, herself, in her evidence, admitted that she had  
voluntarily went along with the accused and a false complaint has been



lodge by the mother of the victim girl with a strong motive as there was already previous enmity between victim's mother and petitioner regarding money transaction. Further, the PW5-Doctor who examined the victim girl has also opined that there is no physical injury upon the body of the victim girl. Thus, he submitted that there are arguable points in this appeal and the petitioner has every chance to succeed in the Criminal appeal. He further submitted that the petitioner is now under judicial custody. Hence, he prayed for suspension of sentence till the disposal of this Criminal appeal.

5. On the other hand, the learned Govt. Advocate (crl.side) appearing for the respondent, supporting the impugned order, objected to grant suspension of sentence stating that the petitioner has committed penetrative sexual assault upon the victim girl aged 14 years. He further submitted that on 16.3.2021, the petitioner called her over phone and made her come out of her house and thereafter took her to Vellankanni and Rameshwaram, where, he again committed sexual assault on the victim girl, thus, the act of the petitioner leads to commission of aggravated penetrative sexual assault on the victim child. Therefore, the trial court rightly found the accused guilty under section 5(1) punishable u/s.6 of Protection of Children from Sexual Offence Act, 2012.

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



Advocate (crl.side) appearing for the respondent.

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7. On perusal of records, impugned order, evidence of the victim girl and PW5-Doctor, it is noticed that though the victim girl had stated that she voluntarily went along with the petitioner and had sexual intercourse, it is the petitioner who induced the victim to come out of her house and further with an ill intention, he took her to Velankanni and Rameshwaram, where he had again sexual intercourse with her. Further, the Doctor who examined the victim has also opined that though no physical injuries were found in the body of the victim girl, penetrative sexual assault intercourse is possible. In the circumstances, considering the gravity of the offence committed by the accused and the age of the victim girl, this court is not inclined to grant suspension of sentence. Therefore, this petition is dismissed.

20.06.2023

msr

To

- 1.The Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Erode
2. The Inspector of Police,  
Bhavani All Women Police Station,  
Erode District.
- 3.The Public Prosecutor, High Court, Madras.

**V.SIVAGNANAM, J.**



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