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Crl.M.P.No.7554 of 2023 in Crl.A.No.611 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.M.P.No.7554 of 2023

in

Crl.A.No.611 of 2023

Gunamoorthy

... Petitioner

/vs/

The State Rep. by : The Inspector of Police,
Velankanni Police Station, Nagapattinam District.
[Crime No.75 of 2017]

... Respondent

Prayer : Criminal Miscellaneous Petition filed under section 389 [1] of Cr.P.C., to suspend the sentence imposed in Spl, S.C.No.21 of 2019 dated 26.11.2021 passed by the Sessions Judge, Special Court Under POCSO Act, Nagapattinam and enlarge the petitioner on bail, pending disposal of the above appeal.

For Petitioner ... Mr.U.Kathiravan

For Respondent ... Mr.R.Vinothraja
Government Advocate [Criminal Side]

**ORDER**

This Criminal Miscellaneous Petition has been preferred to suspend the sentence, dated 26.11.2021 imposed on the petitioner in Spl, S.C.No.21 of 2019 on the file of the Sessions Judge, Special Court Under POCSO Act, Nagapattinam and enlarge the petitioner on bail, pending disposal of the above appeal.

2. The petitioner, who is the sole accused in Spl, S.C.No.21 of 2019 is convicted and sentenced by the trial court, by its judgment dated 26.11.2021 as follows;

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Sole	Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act	To undergo RI for 3 years and pay a fine of Rs.10,000/-, in default in payment of fine, to undergo further 6 months SI
	Section 8 read with 7 of POCSO Act, 2012	To undergo RI for 5 years and pay a fine of Rs.20,000/- in default in payment of fine, to undergo further 1 year SI

Total fine amount Rs.30,000/-. The substantial period of sentences shall run consequently. The period of imprisonment, if any, already undergone shall



be set off under section 428 Cr.P.C. The fine amount has been paid by the accused.

3. Aggrieved over the judgment of conviction and sentence imposed on the petitioner in Spl, S.C.No.21 of 2019, 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 would submit that the petitioner has been prosecuted for the offences under section 4 of Tamil Nadu Prohibition of Harassment Act, 1998 and section 3 read with 18 of POCSO Act, 2012 and after trial, the trial Court found the petitioner/ accused guilty and convicted the accused/petitioner as stated above. The petitioner is in custody from 26.11.2021. In this case, the allegation levelled against the petitioner is that he made an attempt to commit rape and the accused also sustained injuries in this case. The trial Court failed to appreciate the oral and documentary evidence of the prosecution, which consists of so may inconsistencies, contradictions and discrepancies, which are fatal to the case of the prosecution. The learned counsel further submitted that there are arguable points in this appeal and the petitioner has every chance to succeed



in this Criminal appeal. Therefore, he prayed for suspension of sentence till the disposal of this Criminal appeal.

5. Heard the learned counsel for the petitioner and learned Government Advocate [Criminal Side] and perused the complaint, FIR and evidence of the witnesses and other material evidence available on record.

6. On a complaint given by the victim, a case has been registered against the petitioner/accused by the Velankanni Police Station Crime No.75 of 2019 for the offences under sections 4 of Tamil Nadu Prohibition of Harassment Act, 1998 and section 3 read with 18 of POCSO Act, 2012. The petitioner has been convicted for the above said offences. The petitioner has raised substantial grounds in the Appeal which require detailed appraisal and he is in custody from 26.11.2021. 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.

7. Accordingly, the relief of suspension of sentence and bail is granted to the petitioner on the following conditions:



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[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 Judicial Magistrate, Nagapattinam;

(ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bonds and the trial 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 when required.

27.06.2023

vrc

To

1. The Sessions Judge, Special Court Under POCSO Act, Nagapattinam
2. The **Judicial Magistrate, Nagapattinam.**
3. The Inspector of Police,
Velankanni Police Station, Nagapattinam District.
4. The Public Prosecutor, High Court, Madras.
5. The Superintendent, Central Prison, Cuddalore.



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V.SIVAGNANAM, J.

VRC

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