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Crl.M.P.No.6196 of 2023 in Crl.A.No.500 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.6196 of 2023

in

Crl.A.No.500 of 2023

Anandan

...
/vs/

Petitioner

State by The Inspector of Police,
All Women Police Station,
Polur, Thiruvannamalai District.
[Cr.No.6 of 2013]

...

Respondent

Prayer : Criminal Miscellaneous Petition has been filed under section 389 [1] read with 439 of Cr.P.C. to suspend the sentence imposed on the petitioner in Special Sessions Case No.27 of 2019 on the file of the learned Special Court, POCSO Cases, Thiruvannamalai, Thiruvannamalai District, dated 10.04.2023 and enlarge the petitioner on bail, pending disposal of the above appeal.

For Petitioner

... Mr.E.Kannadasan

For Respondent

... Mr.A.Gokulakrishnan
Additional Public Prosecutor



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ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence dated 10.04.2023 imposed on the petitioner in Special Sessions Case No.27 of 2019 on the file of the Special Court, POCSO Cases, Thiruvannamalai, Thiruvannamalai District and enlarge the petitioner on bail, pending disposal of the above appeal.

2. The petitioner, who is the first accused in Special Sessions Case No.27 of 2019, is convicted and sentenced by the trial court, by its judgment dated 10.04.2023 as follows:

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
first accused	U/s.376 IPC and Section 4 of POCSO Act 2012	To undergo 10 years RI and pay a fine of Rs.5,000/-, in default in payment of fine, to undergo 1year SI

The period of detention already undergone by the accused is ordered to be set off under section 428 Cr.P.C. However, the first accused was found not guilty for the offences under section 354 of IPC and Section 8 of POCSO Act 2012 and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2012 and acquitted from the above offences.



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3. Aggrieved over the judgment of conviction and sentence imposed on the petitioner/first accused in Special Sessions Case No.27 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 prosecution relied upon the DNA report Ex.P.13 filed by the prosecution and the DNA report excluded the accused from the paternity of the child of the victim and the trial Court failed to consider the DNA Report and convicted the accused. He further submitted that there are material contradiction between the evidences of prosecution witnesses and 164 Cr.P.C. statement of the victim girl. Hence, the learned counsel would submit that there are arguable points in this appeal and the petitioner has every chance to succeed in this Criminal appeal and the petitioner has been in incarceration since 10.04.2023. 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. However, he fairly conceded that the



DNA report excluded the accused from the paternity of the victim child of the victim.

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.

7.On a perusal of the DNA report Ex.P13, the conclusion of the DNA report runs as follows:

"From the DNA typing results of the above samples, it is found that the alleged father Mr.M.Anandhan is excluded from the paternity of the female child Madhuvathani."

8.Considering the DNA Report and also other evidence available on record, 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.

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 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, POCSO Cases, Thiruvannamalai;
- (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.

28.04.2023

Index : Yes/No

Internet: Yes/No

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Note: Issue order copy on 03.05.2023

To

1. Special Court, POCSO Cases,



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Thiruvannamalai, Thiruvannamalai District

2. The Inspector of Police,
All Women Police Station,
Polur, Thiruvannamalai District.

3. The Superintendent, Central Prison, Vellore.

4. The Public Prosecutor, High Court, Madras.



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V.SIVAGNANAM, J.

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