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CrI.M.P.No.7468 of 2023 in CrI.A.No.570 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.06.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CrI.M.P.No.7468 of 2023

in

CrI.A.No.570 of 2023

P. Senthil Kumar

... Petitioner

/vs/

The State, represented by
the Inspector of Police,
Belukurichi Police Station,
Namakkal District
Cr.No.42 of 2019

.. Respondent

Prayer : Criminal Miscellaneous Petition filed under section 389 of Cr.P.C., to suspend the sentence passed in Special C.C.No.19 of 2019, dated 09.02.2023 on the file of the Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahila Court), Namakkal and enlarge the petitioner on bail, pending disposal of the appeal.

For Petitioner

... Mr R. P. Vimal Raj

For Respondent

... Mr.A.Gokulakrishnan, APP



ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence imposed on the petitioner in Special C.C.No.19 of 2019, dated 09.02.2023, by the Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Namakkal and enlarge the petitioner on bail, pending disposal of the appeal.

2. The petitioner, who is the sole accused in Special C.C.No.19 of 2019 is convicted and sentenced by the trial court, by its judgment dated 09.02.2023, as follows;

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Sole accused	U/s.450 IPC	To undergo 7 years RI and a fine of Rs.5000/-, in default in payment of fine, to undergo SI for a period of 6 months.
	U/s.5(m) r/w.6 of POCSO Act, 2012	To undergo 20 years RI and to pay a fine of Rs.5000/-, in default in payment of fine, to undergo SI for 6 months
The sentence of imprisonments imposed on the petitioner were ordered to run concurrently		

3. Aggrieved over the judgment of conviction and sentence imposed by the trial court, 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. There is no evidence for penetrative sexual assault upon the victim girl and the medical evidence of PW17-Doctor is not supporting prosecution case. The evidence of the victim girl is also not in substantially establishing the penetrative sexual assault and already there was a dispute with regard to the family of the victim girl and the accused with regard to transaction of money. In the circumstances, a false case has been foisted against the petitioner. Thus, he 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. The learned Addl. Public Prosecutor, supporting the impugned order objected for granting suspension of sentence stating that the victim girl PW1 clearly deposed about the incident and since the medical examination was done after two days of the occurrence, the Doctor has not found any traces of semen from her private parts. Thus he pleaded for dismissal of this petition.



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6. Heard learned counsel for the petitioner and the learned Addl. Public Prosecutor appearing for the respondent.

7. On perusal of records and impugned judgment, it is noted that the petitioner was convicted for the offences punishable under sections U/s.450 IPC and 5(m) r/w.6 of POCSO Act, 2012 and sentenced as stated above. As per the evidence of PW17-Dr.Gayathri, who examined the victim girl, there is no external or internal injury upon the victim girl and forensic report was also negative with regard to presence of semen. In the circumstances, 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 fact that the evidence of PW1 does not support prosecution case and the petitioner is now under incarceration from 09.02.2023 and after arrest, till he was placed in judicial custody for more than 160 days and the fine amount imposed on him by the trial court was paid, 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 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, Rasipuram.

(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 on the first working day of every month until further orders.

09.06.2023

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To

1. The Judicial Magistrate, Rasipuram.
2. The Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahila Court), Namakkal
3. The Inspector of Police,
Belukurichi Police Station,
Namakkal District.
4. The Public Prosecutor, High Court, Madras.
5. The Superintendent, Central Prison,
Coimbatore.



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V.SIVAGNANAM, J.

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