

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

**DATED : 07.06.2023**

**CORAM**

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

**Crl.M.P.No.7141 of 2023**

**in**

**Crl.A.No.556 of 2023**

R. Kumar

... Petitioner

/vs/

State by  
the Inspector of Police,  
W-8, All Women Police Station,  
Thirumangalam, Chennai.  
Crime No.08 of 2022

.. Respondent

**Prayer** : Criminal Miscellaneous Petition filed under section 389(1) of Cr.P.C., to suspend the sentence imposed on the petitioner by the judgment dated 20.03.2023 in Spl.S.C.No.103 of 2022 passed by the learned Sessions Judge, Special Court of Exclusive Trial of Cases under POCSO Act, pending disposal of the appeal.

For Petitioner

... Mr. M.S. Ramesh

For Respondent

... Mr. A. Gokulakrishnan, APP

## **ORDER**

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence of imprisonment imposed in the judgment dated 20.03.2023 made in Spl.S.C.No.103 of 2022 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Chennai 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.103 of 2022 is convicted and sentenced by the trial court, by its judgment dated 20.03.2023 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.6 of POCSO Act                            | To undergo 20 years RI and a fine of Rs.25,000/-, in default in payment of fine, to undergo SI for a period of 3 months. |
|                                                                                          | U/s.366 of IPC                                | To undergo imprisonment for 5 years and a fine of Rs.5000/-, in default in payment of fine, to undergo SI for one month. |
|                                                                                          | U/s.506(ii) IPC                               | To undergo imprisonment for 3 years                                                                                      |
| The sentence of imprisonments imposed on the petitioner were ordered to run concurrently |                                               |                                                                                                                          |

3. Aggrieved over the judgment of conviction and sentence imposed on the petitioner in Spl.S.C.No.103 of 2022, 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. There is lot of contradiction in the evidence of the victim girl and statement recorded under section 164 Cr.P.C., and during the course of examination, she improved her statement and gave evidence before the court. Further, there is no medical evidence to prove the sexual abuse and there is no physical injuries found on the body of the victim girl to prove the offence and it is merely an allegation. In the circumstances, there are arguable points in this appeal and the petitioner has every chance to succeed in the appeal. Thus, he prayed for suspension of sentence till the disposal of this Criminal appeal.

5. The learned Additional Public Prosecutor objected to grant suspension of sentence stating that the petitioner misbehaved with the victim girl aged 7 years. However, he fairly conceded that though the Doctor has

examined the victim girl, there is no medical evidence to show any injuries on the body of the victim girl.

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

7. Considering the fact that there is no injury found on the body of the victim girl and there is no medical records to prove that the petitioner has committed penetrative sexual assault, 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 also the fact that the petitioner is now under judicial custody, 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 Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai.

(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.

07.06.2023

msr

To

- 1.The Sessions Judge, the Special Court for Exclusive Trial of Cases under POCSO Act, Chennai.
2. The Inspector of Police,  
W-8, All Women Police Station,  
Thirumangalam, Chennai.
- 3.The Public Prosecutor, High Court, Madras.
4. The Superintendent,  
Puzhal Prison-I, Puzhal,  
Chennai.

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**sV.SIVAGNANAM, J.**

msr

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