



WEB COPY

Crl.M.P.No.7197 of 2023 in Crl.A.No.561 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.M.P.No.7197 of 2023

in

Crl.A.No.561 of 2023

Mohammed Irsath

... Petitioner

/vs/

State, represented by
the Inspector of Police,
Ariyankuppam Police Station,
Puducherry District.
Cr.No.15 of 2016

.. Respondent

Prayer : Criminal Miscellaneous Petition filed under section 389(1) of Cr.P.C., to suspend the sentence imposed in Special S.C.No.10 of 2016 dated 28.04.2023 on the file of the Special Judge, Puducherry (Under the POCSO Act, 2012, Puducherry) and enlarge the petitioner on bail, pending disposal of the appeal.

For Petitioner

... Mr R. Sankarasubbu

For Respondent

... Mr. K.S.Mohandass,
Public Prosecutor (Pondicherry)
assisted by Ms.N.Danalatchoumy

ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence, dated 28.04.2023 in S.C.No.10 of 2016 imposed



against the petitioner by the Special Judge at Puducherry (Under the POCSO Act, 2012, Puducherry) and enlarge the petitioner on bail, pending disposal of the appeal.

2. The petitioner, who is the sole accused in S.C.No.10 of 2023 is convicted and sentenced by the trial court, by its judgment dated 28.04.2023 as follows;

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Sole accused	U/s.363 IPC	To undergo RI for 3 years and to pay a fine of Rs.1000/-, in default, in payment of fine, to undergo imprisonment for another one year
	U/s. 6 of POCSO Act, 2012	To undergo RI for a period of ten years and to pay a fine of Rs.5000/-, in default in payment of fine, to undergo imprisonment for another one year
		Since conviction imposed u/s.6 of POCSO Act, 2012, no separate punishment awarded for the offence u/s.376 IPC in view of sec.42 of POCSO Act, 2012
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.



WEB COPY

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 and the petitioner had love affair with each other and the said fact was admitted by her and the same was recorded by the trial court and in paragraph 34 of the judgment of the trial court, the victim herself admitted the love affair with the petitioner. Further, the victim girl did not support the prosecution case and not stated anything with regard to the accused about the criminal occurrence and hence she was treated as hostile. In the circumstances, there is no case for prosecution and the petitioner is having a good case. Thus, he submitted that there are arguable points in this appeal and the petitioner has every chance to succeed in the Criminal Appeal. Stating so, he prayed for suspension of sentence till the disposal of this Criminal appeal.

5. The learned Addl. Public Prosecutor objected for granting suspension of sentence stating that the petitioner kidnapped the victim girl who is a minor and committed penetrative sexual assault upon her. However, he fairly conceded that in paragraph 34 and 41 of the judgment, the trial court recorded that the victim girl has love affair with the petitioner and did



not support the prosecution case.

6. Heard learned counsel for the petitioner and the learned Addl. Public

Prosecutor appearing for the respondent.

7. On perusal of records, it is seen that as per the version of prosecution, the petitioner kidnapped the victim girl, who is a minor and committed rape on her. Thus the petitioner has committed the offences punishable under sections 363, 376 of IPC and u/s.6 of POCSO Act, 2012. According to the petitioner, the victim girl and the petitioner had love affair with each other. Further, it is also noticed in paragraph 34 of the judgment of the trial court, it was recorded that the victim girl went with the petitioner to Pondicherry and stayed along with him in a house of a person known to petitioner. Apart from that, in para 41 of the trial court judgment, it was recorded that she was not supporting the prosecution case and denied the criminal occurrence alleged against the accused and therefore, she was treated as hostile. 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, 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.25,000/-(Rupees twenty five thousand only) along with two sureties, each for a like sum, to the satisfaction of the Special Judge, Puducherry (Under the POCSO Act, 2012, Puducherry);
- (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;

12.06.2023

msr

To

1. The Special Judge, Puducherry (Under the POCSO Act, 2012, Puducherry)
1. The Inspector of Police, Ariyankuppam Police Station, Puducherry District.
3. The Public Prosecutor, High Court, Madras.
4. The Superintendent, Central Prison, Kalapet, Puducherry



WEB COPY



Crl.M.P.No.7197 of 2023 in Crl.A.No.561 of 2023

V.SIVAGNANAM, J.

msr

Crl.M.P.No.7197 of 2023
in
Crl.A.No.561 of 2023

12.06.2023