



Crl.M.P.No.7799 of 2023 in Crl.A.No.622 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.M.P.No.7799 of 2023

in

Crl.A.No.622 of 2023

Agilan

... Petitioner

/vs/

State, represented by
the Inspector of Police,
All Women Police Station,
Kanchipuram.
Cr.No.8 of 2017

.. Respondent

Prayer : Criminal Miscellaneous Petition filed under section 389(1) of Cr.P.C., to suspend the execution of the sentence dated 20.03.2023 in S.C.No.50 of 2019 of New Special Sessions Court and S.C.No.4 of 2018 of Old Special Sessions Court imposed against the petitioner/appellant by the POCSO Court at Chengalpattu, Kancheepuram District and enlarge the petitioner on bail, pending disposal of the appeal.

For Petitioner ... Mr R. Anbalagan

For Respondent ... Mr.A.Gokulakrishnan, APP



ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence dated 20.03.2023 in S.C.No.50 of 2019 of New Special Sessions Court and S.C.No.4 of 2018 of Old Special Sessions Court imposed against the petitioner/appellant by the POCSO Special Court at Chengalpattu, Kancheepuram District and enlarge the petitioner on bail, pending disposal of the appeal.

2. The petitioner, who is the sole accused in S.C.No.50 of 2019 of New Special Sessions Court and S.C.No.4 of 2018 of Old Special Sessions Court is convicted and sentenced by the trial court, by its judgment dated 20.03.2023 as follows;

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Sole accused	U/s.366 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. 417 IPC	To undergo SI for a period of one year
	U/s.6 r/w.5(j)(ii) of POCSO Act, 2012	To undergo 10 years RI and to pay a fine of Rs.10,000/-, in default in payment of fine, to undergo one year RI
The sentence of imprisonments imposed on the petitioner were ordered to run concurrently		



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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.

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, in her cross examination deposed that she became pregnant only through her husband namely, Madurai and she was treated as hostile. Hence, her evidence is not supporting the prosecution case. Thus, he submitted that there are arguable points in this appeal and the petitioner has every chance to succeed in this Criminal Appeal. Thus, 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, who was a married man, kidnapped the minor victim girl and had sexual intercourse with her on making false promise that he would marry her. Due to the relationship, a male child was born to them. Thus he pleaded for dismissal of this petition.

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



Prosecutor appearing for the respondent.

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7. On perusal of records, it is seen that as per the version of prosecution, the petitioner kidnapped the victim girl aged 16 years and on making false promise that he would marry her, he had sexual intercourse with her several times, due to which, she got pregnant and gave birth to a male child, thereby, the petitioner has committed the offences punishable under sections 363, 366, 417 and Sec.6 r/w.5(j)(ii) of POCSO Act, 2012. According to the petitioner, at the time of trial, during her cross examination, the victim girl had deposed that she begot the male child only through her husband Madurai during the year 2016. The evidence of PW1-victim girl does not support the case of prosecution. 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.10,000/-(Rupees ten thousand only) along with two sureties, each for a like sum, to the satisfaction of the Judicial Magistrate Court No.I, Chengalpattu

(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.

09.06.2023

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To

1. The POCSO Special Court at Chengalpattu, Kancheepuram District.
2. The Inspector of Police,
All Women Police Station,
Kanchipuram.
3. The Public Prosecutor, High Court, Madras.
4. The Superintendent, Central Prison,
Puzhal, Chennai.

V.SIVAGNANAM, J.



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