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Crl.M.P.No.8910 of 2023 in Crl.A.No.496 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.M.P.No.8910 of 2023

in

Crl.A.No.496 of 2022

Marimuthu

... Petitioner

/vs/

State, represented by
The Inspector of Police,
All Women Police Station,
Panruti, Cuddalore District.
Crime No.13 of 2019

.. Respondent

Prayer : Criminal Miscellaneous Petition filed under section 389(1) of Cr.P.C., to suspend the sentence imposed against the petitioner dated 29.10.2021 in Spl.S.C.No.103 of 2019 on the file of the Special Court (POCSO Cases), Cuddalore District and enlarge the petitioner on bail, pending disposal of the appeal.

For Petitioner ... Mr. P. Pugalenthir

For Respondent ... Mr.R. Vinoth Raja, GA (crl.side)



ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence of imprisonment imposed in the judgment dated 29.10.2021 made in Spl.S.C.No.103 of 2019, on the file of the Special Court (POCSO Cases), Cuddalore District 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 2019 is convicted and sentenced by the trial court, by its judgment dated 29.10.2021 as follows;

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Sole accused	U/s.366 IPC	To undergo 10 years RI and a fine of Rs.2,000/-, in default in payment of fine, to undergo SI for a period of 3 months.
	U/s. 5(m), 6 of POCSO Act, 2012 r/w.376AB of IPC	To undergo 20 years RI and to pay a fine of Rs.5000/-, in default in payment of fine, to undergo 3 months SI
	U/s. 5(k), 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 3 months SI
Acquitted from the charges framed under section 324 and 506(i) IPC		
The sentences of imprisonments were ordered to run concurrently.		



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3. Aggrieved over the judgment of conviction and sentence imposed on the petitioner in Spl.S.C.No.103 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 submitted that the judgment of the trial court is contrary to law, weight of evidence and probabilities of the case. He relied upon the evidence of the victim girl as well as PW-13 Doctor who examined the victim girl. Though the victim girl, in her evidence, had deposed that the accused caused burn injuries upon her private part, the Doctor who examined the victim girl viz., PW13-Dr.Jayasree, found no burn injuries on her private parts. Besides, she did not find any external or internal injuries and also opined that there is no evidence of a person having sexual intercourse upon the victim girl. Thus, he submitted that there are arguable points in this appeal and the petitioner has every chance to succeed in this Criminal appeal. Further, the petitioner is under judicial custody from 29.10.2021. Hence, he prayed for suspension of sentence till the disposal of this Criminal appeal.



5. The learned Govt. Advocate (crl.side) objected for granting suspension of sentence stating that the petitioner has made sexual assault upon the mentally retarded victim girl, who is a minor aged 11 years. However, he fairly conceded that in her evidence, PW-13 Doctor has opined that there were no external or internal injuries and there were no symptoms found on the body of the victim girl evidencing that she had sexual intercourse with the petitioner.

6. Heard learned counsel for the petitioner and the learned Govt. Advocate (crl.side) appearing for the respondent.

7. On perusal of records, the fact reveals that the petitioner was prosecuted by the respondent police for the offence under sections 366, 324, 506(i) IPC and 5(m), 5(k), 6 r/w.376(AB) IPC and before the trial court, he was convicted and sentenced for the offence under sections U/s.366 IPC, 5(m), 5(k), 6 of POCSO Act, 2012 r/w.376AB of IPC. According to the petitioner, as per victim's evidence and PW-13 Doctor's evidence, there were no internal or external injuries upon the private parts of the victim and it is opined by the Doctor in her evidence that there is no evidence available that the victim girl was subjected to sexual intercourse. Considering the nature of



the allegation levelled against the petitioner and evidence of victim girl and

PW13- Doctor, who noticed the absence of burn injury on her private part as stated by the victim and also taking into consideration the absence of external or internal injuries upon the private part of the victim girl as well as the opinion of the Doctor that there is no evidence of the victim girl having sexual intercourse with a person, this Court is of the view that the petitioner has a good case in the appeal and 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 nature of the offence and the petitioner is under incarceration from 29.10.2021 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 Special Court (POCSO Cases), Cuddalore District.

(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.

27.06.2023

msr

To

- 1.The Special Court (POCSO Cases), Cuddalore District
2. The Inspector of Police,
All Women Police Station,
Panruti, Cuddalore District.
- 3.The Public Prosecutor, High Court, Madras.
4. The Superintendent, Central Prison,
Cuddalore.

V.SIVAGNANAM, J.



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