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Crl.M.P.No.20083 of 2022 in Crl.A.No.1324 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.M.P.No.20083 of 2022
in Crl.A.No.1324 of 2022

Putshithan

... Petitioner

/versus/

The State Rep by
The Inspector of Police,
Emerald Police Station,
Emerald,
Udhagamandalam,
Nilgiris District

.. Respondent

Prayer : Criminal Miscellaneous Petition filed under Section 389 (1) of Cr.P.C., to suspend the sentence imposed by the Sessions Judge/Mahalir Neethi Mandram, (FTMC), Udhagamandalam, Nilgiris in Spl.C.C.No.12 of 2021 dated 15.09.2022 and enlarge the petitioner/appellant on bail pending disposal of the above appeal.

For Petitioner

... Mr.PA.Kathirvel

For Respondent

... Mr.C.E.Pratap
Government Advocate (Crl.Side)



ORDER

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This Criminal Miscellaneous Petition has been preferred seeking to suspend the judgment of conviction and sentence passed by the Sessions Mahalir Neethi Mandram, (FTMC), Udhagamandalam, Nilgiris in Spl.C.C.No.12 of 2021, dated 15.09.2022 and to enlarge the petitioner/appellant on bail pending criminal appeal.

2. The petitioner, who is the sole accused in Spl.S.C.No.12 of 2021, was convicted and sentenced by the Sessions Mahalir Neethi Mandram, (FTMC), Udhagamandalam, Nilgiris, which reads as follows:

<i>Petitioner Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Sole accused	Under Section 3(1) r/w 4(2) of POCSO Act and 5 (i)(j)(ii) r/w 6 of the POCSO Act and Section 342 of I.P.C	To undergo 20 years R.I and to pay a fine of Rs.10,000/- in default to undergo 6 months Simple Imprisonment.
	In view of Section 33(8) of POCSO Act r/w 357 A(2) of Cr.,P.C r/w Rule 9(3) of POCSO Rules 2020	To pay compensation of Rs.50,000/- to the victim girl.

The remand period already undergone by the accused was ordered to be set



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3. Aggrieved against the judgment of conviction and sentence imposed on the petitioner, he preferred the present criminal appeal along with the instant miscellaneous petition, seeking suspension of sentence and bail.

4. Heard the learned counsel appearing for the petitioner and the learned Govt. Advocate (crl.side) appearing for the State.

5. The Learned Counsel for the petitioner submitted that the age of the petitioner is 67 years and the allegation that the accused caused pregnancy to the victim girl is falsified by the evidence of P.W.15 Dr.Easwari. There is no medical evidence to support that the victim was sexually assaulted by the petitioner and made pregnant. Further, the allegation made is that sexually assault is not proved. Therefore, he seeks to enlarge the petitioner on bail.

6. The Learned Government Advocate (Crl.Side) for the respondent objected to grant bail to the accused.



7. On perusal, it is seen that the accused has been prosecuted for the offences under Sections 342 of IPC and Section 5(1) r/w 5(m) r/w 6 and Section 5(j)(ii) r/w 6 of the Protection of Children from Sexual Offences Act, 2012. The trial Court altered the charge for offence under Section 5(1) r/w 5 (m) r/w 6 of POSCO Act. The petitioner was sentenced for the offences under Section 3(1) r/w 4(2) of POCSO Act. Further, in view of Section 33(8) of the POCSO Act r/w Section 357 A(2) of Cr.P.C. r/w Rule 9(3) of POCSO Rules 2020 ordered to pay compensation of Rs.50,000/- to the victim girl and Admittedly, the age of the petitioner is 67 years old. On perusal medical evidence and the deposition of P.W.15 Dr.Eswari, who examined the victim girl, she has deposed before the trial Court that there is no evidence to show that she has found any external injury on the private part of the victim and was not found pregnant at the time of examination.

8. In such facts and circumstances of the case and taking note of the fact that the age of the accused is 67 years and he is in judicial custody from 15.09.2022, this Court is inclined to grant suspension of sentence to the petitioner, till the disposal of this Criminal Appeal.



9. Accordingly, the relief for suspension of sentence is granted to the petitioner on the following conditions:

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- (i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty five thousand only) along with two sureties, each for a likesum to the satisfaction of the Judicial Magistrate, Udhagamandalam.
- (ii) The petitioner and sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial 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.

03.01.2023

bsm

To

- 1.The Judicial Magistrate, Udhagamandalam.
- 2.The Sessions Judge/Mahalir Neethi Mandram, (FTMC), Udhagamandalam, Nilgiris
3. The Inspector of Police, Emerald Police Station, Emerald, Udhagamandalam, Nilgiris District
- 4.The Central Prison, Coimbatore.
- 5.The Public Prosecutor, High Court, Madras.



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V.SIVAGNANAM, J.

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