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Crl.M.P.No.47 of 2023 in Crl.A.No.1 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.M.P.No.47 of 2023

in

Crl.A.No.1 of 2023

Vimal Raj @ Sapiyan

... Petitioner

/vs/

The Inspector of Police,
Panrutti All Women Police Station,
Cuddalore District.
Crime No.15 of 2019

.. Respondent

Prayer : Criminal Miscellaneous Petition filed under section 389(1) of Cr.P.C., to suspend the execution of the sentence against the petitioner/accused by the Spl.S.C.No.140 of 2019 on the file of the learned Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore, dated 24.09.2022 and enlarge the petitioner on bail, pending disposal of the appeal.

For Petitioner

... Mr. P. Muthamizh Selvakumar

For Respondent

... Mr.C.E.Pratap, GA (crl.side)



ORDER

This Criminal Miscellaneous Petition has been preferred seeking to suspend the sentence of imprisonment imposed in the judgment dated 24.09.2021 made in Spl.S.C.No.140 of 2019 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore 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.140 of 2019 is convicted and sentenced by the trial court, by its judgment dated 24.09.2021 as follows;

<i>Petitioner's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Sole accused	U/s.450 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(k) punishable u/s. 6 of POCSO Act, 2012, r/w.376(3) IPC	To undergo 20 years RI and to pay a fine of Rs.2000/-, in default in payment of fine, to undergo 3 months SI
		Acquitted from the charge u/s.506(ii) IPC
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 on the petitioner in Spl.S.C.No.140 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. The victim girl is a mentally retarded person. The evidence of the victim girl and her statement recorded under section 164 of Cr.P.C., have been recorded with the help of special teachers. So there is chances for tutoring the victim girl. Hence, the evidence recorded with the help of Special Teacher may not be taken as conclusive evidence to place weight upon the victim girl's evidence. Thus, he would further submit that there are arguable points in this appeal and the petitioner has every chance to succeed in this Criminal appeal. Further, the petitioner is having a family of wife and two children and he is under judicial custody from 24.09.2021. Thus, he prayed for suspension of sentence till the disposal of this Criminal appeal.

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



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6. On perusal of records, the fact reveals that the victim girl's statement under section 164 of Cr.P.C., was recorded with the help of special teachers, so there is every chance for tutoring the victim girl while recording her statement. 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 nature of the offence and the petitioner is under incarceration from 24.09.2021 and he is also having family of wife and two children and the family is not supported by the petitioner, this Court is of the view that the petitioner is entitled to the relief of suspension of sentence and bail.

7. 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 for Exclusive Trial of Cases under POCSO Act, Cuddalore.

(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



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Aadhaar card or Bank pass Book to ensure their identity;
and;

(iii) The petitioner shall appear before the trial Court as and
when required.

02.03.2023

msr

To

- 1.The the Special Court for Exclusive Trial of Cases under POCSO Act,
Cuddalore.
2. The Inspector of Police,
Panrutti All Women Police Station,
Cuddalore District.
- 3.The Public Prosecutor, High Court, Madras.
4. The Superintendent, Central Prison,
Cuddalore.

V.SIVAGNANAM, J.



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