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Crl.M.P.No.1310 of 2024
in Crl.A.No.119 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2024

CORAM:

**THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

Crl.M.P.No.1310 of 2024
in Crl.A.No.119 of 2024

Appas @ Appas Ali

... Petitioner

Vs.

The State rep. by
The Inspector of Police,
AWPS-Avinashi Police Station,
Tiruppur District.
Crime No.1/2020

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of the Criminal Procedure Code, seeking to suspend the sentence imposed in judgment in Spl.S.C.No.21/2021 dated 16.08.2022 passed by the learned Sessions Judge, Magalir Neethimandram, Tiruppur and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.B.Shruthan

For Respondent : Mr.A.Gokulakrishnan,
Additional Public Prosecutor



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ORDER

(Order of the Court was made by *SUNDER MOHAN, J.*)

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Magalir Neethimandram, Tiruppur, on 16.08.2022 in Spl.S.C.No.21 of 2021 and enlarge him on bail.

2. The learned Sessions Judge, Magalir Neethimandram, Tiruppur, in Spl.S.C.No.21 of 2021, has convicted the petitioner and sentenced him as follows:-

	<i>Offence</i>	<i>Sentence imposed</i>
<i>Accused</i>	Section 5(1) 5(j)(ii) r/w.6 of POCSO Act	Life imprisonment along with a fine of Rs.1,000/- in default to undergo simple imprisonment for 3 months.
	Section 376(3) of IPC	Life imprisonment along with a fine of Rs.1,000/- in default to undergo simple imprisonment for 3 months

The sentences are ordered to run concurrently.



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3. Challenging the above conviction and sentence, the petitioner has filed the above Criminal Appeal and he seeks for suspension of sentence and bail in the present miscellaneous petition.

4. Heard Mr.B.Shruthan, learned counsel appearing for the petitioner and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, appearing for the respondent/Police.

5. It is the case of the prosecution that the victim girl and the petitioner were neighbours; that when the victim's parents went out of the house for their job at about 10 A.M. on 10.01.2020, the petitioner came to the house of the victim and committed penetrative sexual assault repeatedly on the promise that he would marry her and thereafter, threatened the victim of dire consequences if she revealed the same to anyone else.

6. The learned counsel for the petitioner submitted that none of the offences for which the petitioner was convicted, are made out; that the



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prosecution has failed to prove the age of the victim in the manner known to law; that since even according to the prosecution, the petitioner has promised to marry the victim, it was not the case of forcible intercourse; that the DNA test also reveal that the profile of the petitioner did not match with the foetus of the victim.

7. Per contra, the learned Additional Public Prosecutor submitted that the prosecution has proved the case beyond reasonable doubts and therefore, the petitioner is not entitled for grant of suspension of sentence.

8. We have perused the records carefully and considered the rival submissions.

9. It is seen from the records that the only evidence produced by the prosecution to prove the date of birth, is the school certificate, which was obtained on 18.02.2020 i.e., on the date of the complaint, from the Headmistress of the school where the victim was studying; that the parents of the victim have not deposed about the age of the victim; that the birth



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certificate of the victim was not marked and that the basis on which the date of birth has been mentioned in the school certificate, has not been proved. Therefore, we are of the *prima facie* view that the age of the victim is not established in accordance with law. That apart, we find from the DNA test that the DNA profile of the petitioner could not be compared with the foetus of the victim and that it matched only with the victim. It is also the prosecution's case that the consent was obtained from the victim on the false promise of marriage. On an overall consideration of the evidence on record, we are of the *prima facie* view that the petitioner has a fair chance of success in the appeal.

10. Considering the above facts; that the petitioner is in custody from 16.08.2022 i.e., from the date of conviction; that during the trial, the petitioner was in custody for 11 months and that the appeal is not likely to be taken up in the near future, we are inclined to suspend the sentence and grant bail to the petitioner.

11. Accordingly, this Criminal Miscellaneous Petition stands



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allowed and the sentence imposed on the petitioner is suspended on the following conditions:-

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties each, for a like sum to the satisfaction of the learned Sessions Judge, Magalir Neethimandram, Tiruppur;
- (ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity;
- (iii) The petitioner shall appear before the Trial Court on the first working day of every month at 10.30 a.m., until the disposal of the appeal and if he is not able to appear before the Trial Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the Trial Court on any other day in lieu of the date of his absence, as directed by the Trial Court.

(M.S.R, J.)

(S.M, J.)

26.07.2024

Index: Yes/No

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Note: Issue Order Copy on 31.07.2024



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To

1.The Sessions Judge,
Magalir Neethimandram,
Tiruppur,

2.The Inspector of Police,
AWPS-Avinashi Police Station,
Tiruppur District.

3.The Superintendent,
Central Prison,
Coimbatore.

4.The Public Prosecutor,
High Court, Madras.



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and
SUNDER MOHAN, J.

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