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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.M.P.No.10399 of 2024

in

Crl.A.No.942 of 2024

Babu
S/o.Mohan

... Petitioner

-Vs-

The State,
Represented by The Inspector of Police,
Peelamedu Police Station,
Coimbatore City.
(Crime No.340 of 2021)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 430(1) of Bharatiya Nagarik Suraksha Sanhita, 2023 to suspend the sentence of imprisonment to the petitioner as ordered by the learned Sessions Judge, Mahila Court / Additional Special Judge for Exclusive Trial of Cases under POCSO Act, Coimbatore, vide judgment dated 27.04.2023 passed in S.C.No.03 of 2023 and enlarge the petitioner / appellant on bail, pending disposal of the criminal appeal.

For Petitioner : Mr.M.N.Balakrishnan



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For Respondent : Mrs.G.V.Kasthuri
Additional Public Prosecutor

ORDER

The criminal miscellaneous petition has been filed by the petitioner to suspend the sentence imposed on the petitioner, vide judgment dated 27.04.2023 passed in S.C.No.03 of 2023 by the learned Sessions Judge, Mahila Court / Additional Special Judge for Exclusive Trial of Cases under POCSO Act, Coimbatore, and enlarge the petitioner /appellant on bail, pending disposal of the above criminal appeal.

2. The de facto complainant is the mother of the victim and she had two sons and one daughter, i.e., victim, who was aged about 40 years. One of her son passed away and another son, namely, Sathyanarayan is a mentally retarded person. Babu @ Balasubramaniam is a Poosari of Bannariamman Temple. On 11.03.2021, Babu @ Balasubramaniam along with accused came to the de facto complainant's house and requested the victim's father to do pooja in order to get rid of his son from abnormality. Therefore, on 12.03.2021, the accused Babu with Bannariamman Kovil Poosari, namely, Babu @ Balasubramaniam came to the house of the de facto complainant and performed pooja. The



accused locked the room along with victim and raped her. Hence, the de facto complainant lodged a complaint before the Law Enforcing Agency and the same was taken on file in S.C.No.03 of 2023. The trial Court convicted the petitioner for the offence under Section 376(1) of IPC and sentenced him to undergo ten years rigorous imprisonment and to pay a sum of Rs.500/- towards fine, in default to undergo simple imprisonment for a further period of three months. Challenging the same, the appellant has filed the criminal appeal and the present miscellaneous petition seeking suspension of sentence.

3. The learned counsel for the petitioner / accused submitted that when the entire family members are outside of the house, it is impossible to rape the victim and the victim did not raise any voice. He further submitted that there are lot of material contradictions in the evidence of the prosecution and the prosecution evidence is also highly unbelievable and the petitioner is now confined in the prison for more than two years years. He further submitted that the petitioner is ready to abide any condition imposed by this Court. Accordingly, he prayed for appropriate orders.



4. Heard the learned Additional Public Prosecutor appearing for the respondent.

5. Having regard to the fact that there are arguable points involved in the criminal appeal and further, the appeal is not likely to be taken up for final hearing in the near future and also considering the fact that the accused has been under incarceration for more than two years, I am of the considered opinion that the petitioner is entitled for the relief of suspension of sentence.

6. Accordingly, the Criminal Miscellaneous Petition is ordered and the substantive sentence of imprisonment alone imposed as against the petitioner is hereby suspended and the petitioner is directed to be released on bail on the following conditions:

a) the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) to the satisfaction of the learned Sessions Judge, Mahila Court / Additional Special Judge for Exclusive Trial of Cases under POCSO Act, Coimbatore, along with two sureties for a like sum;



b) the petitioner shall report before the Court below at 10.30 a.m on the first working day of every month, pending disposal of the appeal.

7. It is made clear that, if the petitioner indulges in similar offence in future, the suspension of substantive sentence alone granted today will automatically stand dismissed without any further reference to this Court.

24.07.2024
(2/2)

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Note: Issue order copy on 24.07.2024

To

1. The learned Sessions Judge,
Mahila Court / Additional Special Judge
for Exclusive Trial of Cases under POCSO Act,
Coimbatore,
2. The Central Prison,
Coimbatore.
3. The Inspector of Police,
Peelamedu Police Station,
Coimbatore City.
4. The Public Prosecutor,
High Court of Madras,
Madras.



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M.DHANDAPANI, J.

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