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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.M.P.No.10400 of 2024

in

Crl.A.No.943 of 2024

D.Shankar
S/o.Dhuraishamy

... Petitioner

-Vs-

The State,
Represented by The Inspector of Police,
Thirupathur Taluk Police Station,
Thirupathur District.
(Crime No.523 of 2016)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) r/w 439 of Cr.P.C. to suspend the sentence of imprisonment to the petitioner as ordered by the learned Special Judge for Exclusive Trial of Cases under POCSO Act, Vellore, vide judgment dated 13.12.2023 passed in Spl.S.C.No.129 of 2020 and enlarge the petitioner / appellant on bail, pending disposal of the criminal appeal.

For Petitioner : Mr.E.Kannadasan



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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 13.12.2023 passed in Spl.S.C.No.129 of 2020 by the learned Special Judge for Exclusive Trial of Cases under POCSO Act, Vellore, and enlarge the petitioner /appellant on bail, pending disposal of the above criminal appeal.

2. The petitioner was convicted for the offence under Section 11(i) r/w 12 of POCSO Act, 2012 and Section 506(2) of IPC. In respect of Section 11(i) r/w 12 of POCSO Act, 2012, the petitioner was sentenced to undergo three years rigorous imprisonment and to pay a sum of Rs.5,000/- towards fine, in default to undergo simple imprisonment for a further period of three months and in respect of Section 506(2) of IPC, the petitioner was sentenced him to undergo one year rigorous imprisonment and to pay a sum of Rs.1,000/- towards fine, in default to



undergo simple imprisonment for a further period of three months. Both the sentences shall run concurrently. 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 the only allegation as against the petitioner is that the petitioner is standing naked in front of P.W.2 and except this allegation, no other allegation is made against the accused. 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 seven months. 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



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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 seven months, 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 Special Judge for Exclusive Trial of Cases under POCSO Act, Vellore, 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



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(2/2)

1. The learned Special Judge
for Exclusive Trial of Cases under POCSO Act,
Vellore,
2. The Central Prison,
Vellore.
3. The Inspector of Police,
Thirupathur Taluk Police Station,
Thirupathur District.
4. The Public Prosecutor,
High Court of Madras,
Madras.



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M.DHANDAPANI, J.

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