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Crl.M.P.No.10653 of 2023
in Crl.A.No.769 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.10653 of 2023

in

Crl.A.No.769 of 2023

Vinothkumar @ Vinoth

... Petitioner /Accused

Vs.

State: Represented by
Inspector of Police,
Villianur Police Station.
(Crime No.159 of 2017)
Puducherry.

... Respondent / Complainant

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(2) r/w 439 of Cr.P.C. praying to suspend the sentence imposed on the petitioner in Special Sessions Case No.62 of 2019 by the learned Special Judge for Exclusive Trial of Cases under POCSO Act at Puducherry by an order dated 27.06.2022 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Mr.K.S.Mohandass,
Public Prosecutor (Puducherry)
Assisted by
Ms.Dhanalatchoumy



*Crl.M.P.No.10653 of 2023
in Crl.A.No.769 of 2023*

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ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in Special Sessions Case No.62 of 2019 dated 27.06.2022 on the file of the learned Special Judge for Exclusive Trial of Cases under POCSO Act at Puducherry and release the petitioner on bail pending disposal of the above Criminal Appeal.

2. It is the case of the prosecution that the petitioner and the victim belong to the same village; that on 08.08.2017 at about 23.30 hours, the petitioner had kidnapped the victim, who was then aged 14 years, from the temple festival in his motor cycle and took her to a river bed and thus committed penetrative sexual assault.

3. The petitioner/accused in Special Sessions Case No.62 of 2019 was convicted by the Trial Court by judgment dated 27.06.2022 for the offences under Sections 366 and 376 of I.P.C. and Section 4 of POCSO Act, 2012 and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 3 months simple imprisonment for the offence



*Crl.M.P.No.10653 of 2023
in Crl.A.No.769 of 2023*

WEB COPY

under Section 366 of I.P.C. and for the offence under Section 4 of POCSO Act, sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three months simple imprisonment. Aggrieved by the same, he filed Crl.A.No.769 of 2023 before this Court along with the instant miscellaneous petition seeking suspension of sentence and bail.

4.The learned counsel for the petitioner would submit that the petitioner is in custody from 27.06.2022; that the evidence of the victim cannot be believed, since the Doctor/PW9 had categorically stated that there is no evidence of vaginal or anal intercourse, though there is evidence of genital assault; that this evidence of Doctor is contrary to the victim's evidence; that in any case, the evidence would suggest that the victim had gone voluntarily with the petitioner, who was aged about 23 years at the time of occurrence and the question as to whether the evidence of the victim has to be believed has to be determined in the appeal and prayed for suspension of sentence.

5.Learned Public Prosecutor (Puducherry) per contra submitted that the evidence of the victim coupled with Doctor's evidence that there was a genital assault would show that the prosecution had established his case beyond



Crl.M.P.No.10653 of 2023
in Crl.A.No.769 of 2023

reasonable doubt; that the consent of the victim, who was then a minor is immaterial and therefore, the petitioner has not made out a ground for suspension of sentence.

6. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor (Puducherry) appearing for the respondent and perused the counter filed by the respondent.

7. Admittedly, the petitioner is in custody from 27.06.2022. The evidence of the Doctor is that there is no evidence of vaginal or anal intercourse, though there is evidence of genital sexual assault. The Doctor would further admit in his cross examination that the nature of the injuries on her private part could have been caused, even if one rides a bicycle. The conviction is based on the sole testimony of the victim. This has to be tested in the appeal.

8. Considering the aforesaid facts; that there are several arguable points in the appeal, which requires consideration; the fact that the appeal is not likely to be taken up in the near future and since the petitioner is in custody from 27.06.2022, this court is inclined to grant the relief of suspension of sentence to



*Crl.M.P.No.10653 of 2023
in Crl.A.No.769 of 2023*

the petitioner.

9. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioner is suspended till the disposal of the above Criminal appeal and the petitioner is ordered to be released on bail on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.10,000/-, with two sureties, each for a like sum to the satisfaction of the learned Special Judge for Exclusive Trial of Cases under POCSO Act at Puducherry;
- (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; and
- (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.

16.12.2024

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Issue order copy by 19.12.2024



Crl.M.P.No.10653 of 2023
in Crl.A.No.769 of 2023

Upload the order copy forthwith.

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SUNDER MOHAN, J.

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To

- 1.The Special Judge
Special Court for Exclusive Trial of Cases under POCSO Act,
Puducherry.
- 2.The Superintendent,
Central Prison,
Puducherry.
- 3.Inspector of Police,
Villianur Police Station.
Puducherry.
- 4.The Public Prosecutor,
High Court, Madras.

Crl.M.P.No.10653 of 2023
in Crl.A.No.769 of 2023

16.12.2024