



*Crl.M.P.No.19902 of 2023
in Crl.A.No.383 of 2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.19902 of 2023

in

Crl.A.No.383 of 2023

Vengatesh

...

Petitioner /Accused

Vs.

The Inspector of Police,
All Women Police Station
Sankagiri
Salem District.
(Crime No.5 of 2019)

...

Respondent / Complainant

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C, praying to suspend the sentence passed by the Sessions Judge, POCSO Court, Salem in Spl.S.C.No.99 of 2020 dated 16.06.2022 and to enlarge the petitioner on bail pending disposal of the present Criminal Appeal.

For Petitioner : Mr.T.N.Rangesh Kanna

For Respondent : Dr.C.E Pratap,
Govt. Advocate (Crl.side)

ORDER



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This Criminal Miscellaneous Petition has been filed by the petitioner to suspend the sentence passed by the Sessions Judge, POCSO Court, Salem in Spl.S.C.No.99 of 2020 dated 16.06.2022 and to enlarge the petitioner on bail pending disposal of the present Criminal Appeal.

2. The case of the prosecution is that the petitioner is a close relative of the mother of the victim; that when the parents of the victim were doing coolie work, they had sent the victim to the house of PW1's mother-in-law; that during September 2019, PW1 found that the victim was sick and on examination found that she was pregnant and that a complaint was lodged and during investigation, it was revealed that the petitioner and another person who was a juvenile at the time of filing final report had committed penetrative sexual harassment on the victim. It is the further case of prosecution that the respondent have filed final report against the juvenile before the Juvenile Justice Forum, Salem and the same is pending trial.

3. The petitioner/accused in Spl.C.C.No.99 of 2020 was convicted by the Trial Court by judgment dated 16.06.2022 under Section 7 r/w 8 of POCSO Act and sentenced to undergo rigorous imprisonment for 5 years and



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to pay Rs.10,000/- and in default to pay the fine to undergo a simple imprisonment for 6 months, Section 5(1) r/w 6 and sentenced to undergo rigorous imprisonment for 20 years and to pay Rs.10,000/- and in default to pay the fine undergo a simple imprisonment for 6 months, Section 5(j)(ii) r/w 6 and sentenced to undergo rigorous imprisonment for 20 years and to pay Rs.10,000/- and in default to pay the fine undergo a simple imprisonment for 6 months. Aggrieved by the same, the petitioner/accused filed Crl.A.No.383 of 2023 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. The learned counsel for the petitioner would submit that the allegation against the petitioner is false and that in any case, the petitioner and the victim, due to mutual innocence and biological attraction, had committed the alleged acts and that the petitioner is in custody from 16.06.2022 and that the prosecution version that two people were involved in the penetrative sexual assault is improbable and that there are several arguable points in the appeal.



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5. The learned Government Advocate (crl.side) appearing for the respondent, per contra, submitted that the prosecution had established its case beyond doubt and that the petitioner has not made out any ground for suspension of sentence and prayed for dismissal of the petition.

6. Heard the learned counsel for the petitioner as well as learned Government Advocate (crl.side) appearing for the respondent and perused the records.

7. Admittedly, the victim who was aged about 15 years at the time of occurrence had not complained of the occurrence to any person. The prosecution case is that apart from the petitioner, another person has committed penetrative sexual assault. The petitioner was aged 22 years at the time of occurrence.

8. Considering the submissions of the learned counsel for the petitioner, the age of the petitioner and the victim and that there are arguable points on the above appeal and the fact that the petitioner is in custody from 16.06.2022, this Court is inclined to grant the relief of suspension of sentence to the petitioner.



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9. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioner is suspended 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 Sessions Judge, POCSO Court, Salem ;
- (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.

13.11.2024

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Issue order copy by 19.11.2024
Upload the order copy forthwith.



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SUNDER MOHAN, J.

rgt

To

1.The Sessions Judge,
POCSO Court, Salem

2. The Superintendent,
Central Prison,
Salem.

3.The The Inspector of Police,
All Women Police Station
Sankagiri
Salem District.

4.The Public Prosecutor,
High Court, Madras.

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