



Crl.M.P.(MD) No.342 of 2024

Crl.M.P.(MD) No.342 of 2024
in
Crl.A(MD) No.850 of 2022

VIVEK KUMAR SINGH, J.

The petitioner has filed this Criminal Miscellaneous Petition praying to suspend the sentence imposed on him by the learned Sessions Judge, Sessions Court for Exclusively Trial of Cases under POCSO Act, Virudhunagar District at Srivilliputhur, in Spl.S.C.No.17 of 2019 dated 23.09.2022 and to enlarge him on bail, pending disposal of the Criminal Appeal.

2. It is submitted by the learned counsel for the petitioner that a case has been registered against the petitioner in Crime No.442 of 2018, on the file of the respondent/Inspector of Police, Vachakkarapatti Police Station, Virudhunagar District, for the offences punishable under Sections 5(i) r/w. 6 of 'the Protection of Children from Sexual Offences Act, 2012' [hereinafter referred to as 'POCSO Act' for the sake of brevity] and 363 of IPC and the same



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was taken on file in Spl.S.C.No.17 of 2019 before the learned Sessions Judge, Sessions Court for Exclusively Trial of Cases under POCSO Act, Virudhunagar District at Srivilliputhur. The petitioner was convicted and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) with one year simple imprisonment in case of default for the offence under Section 5(i) r/w. 6 of POCSO Act and to undergo 2 years rigorous imprisonment and to pay a fine of Rs.2,000/- (Rupees Two Thousand only) with three months simple imprisonment in case of default for the offence under Section 363 of IPC. Challenging the above said conviction and sentence, the petitioner has preferred the Criminal Appeal along with the present Criminal Miscellaneous Petition seeking suspension of sentence.

3. The learned counsel for the petitioner submits that the trial Court failed to consider that the mother of victim (P.W.1) not even mentioned the age of the victim in Ex.P.1 and the victim evidence is self contradictory and not corroborated with other



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witnesses. He further submitted that the age of the victim was not proved by the prosecution through legal evidence, even though P.W.6/ Sermam HM of the victim girl was examined and Bonafide Certificate (Ex.P.9) and xerox copy of Transfer Certificate (Ex.P.8) were marked before the trial Court. However, the original certificates were not compared by the trial Court. Hence, the learned counsel prays for suspension of sentence of the petitioner.

4. The learned Government Advocate (Crl. Side) appearing on behalf of the respondent vehemently opposed this petition informing that the allegations levelled against the petitioner/accused are serious in nature. At the time of occurrence, the victim girl was a minor and hence, prays to dismiss the petition.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. side) appearing for the State and perused the materials available on record.



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6. This Court finds force in the submission of the learned counsel for the petitioner. Taking note of the fact that the age of the victim is not supported by proper documents and also that the evidence of victim is self contradictory, this Court *prima facie* feels that there are arguable points involved in this Criminal Appeal and further, the Criminal Appeal is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

7. Accordingly, this Criminal Miscellaneous Petition is allowed. The sentence imposed by the learned Sessions Judge, Sessions Court for Exclusively Trial of Cases under POCSO Act, Virudhunagar District at Srivilliputhur, in Spl.S.C.No.17 of 2019, dated 23.09.2022, alone is suspended, subject to the following stringent conditions:-

i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only)



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with two blood sureties each for a like sum to the satisfaction of the learned Sessions Judge, Sessions Court for Exclusively Trial of Cases under POCSO Act, Virudhunagar District at Srivilliputhur;

ii) 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 to ensure their identity;

iii) The petitioner shall appear before the concerned Court daily at 10.30 a.m. and 5.30 p.m., till the disposal of the appeal.

iv) The petitioner shall furnish his residential address and mobile number to the Trial Court i.e., learned Sessions Judge, Sessions Court for Exclusively Trial of Cases under POCSO Act, Virudhunagar District at Srivilliputhur.



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8. Subject to the above conditions, this Criminal Miscellaneous Petition is allowed.

12.02.2024

RM

Copy to

The Superintendent,
Central Prison,
Madurai.

Note:

1. Registry is directed to forthwith upload this order in the official website of this Court.
2. All concerned to act on this order being uploaded in official website of this Court without insisting on certified copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code.



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