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Crl.M.P.(MD) No.421 of 2024

Crl.M.P.(MD) No.421 of 2024
in
Crl.A(MD) No.806 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, Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur, in Spl.S.C.No.26 of 2020, dated 07.07.2022 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.47 of 2020, on the file of the respondent/Inspector of Police, Pappanadu Police Station, Thanjavur District, for the offences punishable under Sections 9(i) r/w. 10 of 'the Protection of Children from Sexual



Crl.M.P.(MD) No.421 of 2024

Offences Act, 2012' [hereinafter referred to as 'POCSO Act' for the sake of brevity] and the same was taken on file in Spl.S.C.No.26 of 2020 before the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur. The petitioner was convicted and sentenced to undergo five (5) years rigorous imprisonment and to pay a fine of Rs.20,000/- (Rupees Twenty Thousand only) with one year rigorous imprisonment in case of default. 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 would submit that the prosecution had charged the petitioner with the allegation that he had committed penetrative sexual assault upon the victim girl and that the victim girl had also deposed that she was raped by the petitioner, but the trial Court on a proper appreciation of evidence had come to the decision that the prosecution has failed to prove the



Crl.M.P.(MD) No.421 of 2024

penetrative sexual assault and acquitted the petitioner from the said charge but convicted the petitioner for the charge of sexual assault. He further submitted that the prosecution has failed to prove the age of the victim girl in accordance with law and the reliance placed upon Ex.P.6 and Ex.P.7 by the trial Court is erroneous. Further more, though the petitioner had come up with a probable explanation during his examination under Section 313 Cr.P.C., the same was not considered by the trial Court and it also failed to consider that the prosecution has miserably failed to prove the charge of sexual assault, which is fatal to the case. 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 the evidence of the victim girl is



Crl.M.P.(MD) No.421 of 2024

sufficient enough to prove the prosecution case that there was a rape and he also relied upon the evidence of P.W.11 (Doctor), who examined the victim girl 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.

6. This Court finds force in the submission of the learned counsel for the petitioner and also taking note of the fact that the petitioner has been incarcerated from 07.07.2022, this Court is of the *prima facie* view 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.



Crl.M.P.(MD) No.421 of 2024

WEB COPY

7. Accordingly, this Criminal Miscellaneous Petition is allowed. The sentence imposed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur, in Spl.S.C.No.26 of 2020 dated 07.07.2022 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) with two blood sureties each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur;

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;



Crl.M.P.(MD) No.421 of 2024

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 ie., learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur.

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

12.02.2024

RM



Crl.M.P.(MD) No.421 of 2024

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The Superintendent,
Central Prison,
Tiruchirappalli.

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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