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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Friday, the Eighth day of March Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

CRL MP(MD) No.2786 of 2023

in

CRL A(MD)No.129 of 2023

THANESH ... PETITIONER/ APPELLANT/ SOLE ACCUSED
(NOW CONFINED AS CONVICT PRISONER IN
PALAYAMKOTTAI CENTRAL PRISON)

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
COLACHEL,
KANYAKUMARI DISTRICT
(CRIME NO.20 OF 2020) ... RESPONDENT/RESPONDENT/COMPLAINANT

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed against the appellant in Spl S.C No. 7 of 2021 on the file of the Honble Sessions Judge, POCSO Special Court, Nagercoil dated 27.10.2022 and release him on bail till the disposal of the main appeal.

PRAYER in CRL A(MD)No.129 of 2023:

To call for the entire records connected to the judgment in Spl.S.C.No.7 of 2021 on the file of the Hon'bel Sessions Judge, POCSO Special Court, Nagercoil dated 27.10.2022 and set aside the conviction and sentence imposed against the appellant.



Order : This Criminal Miscellaneous Petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.ALAGUMANI.R, Advocate for the petitioner and of Mr.A.THIRUVADI KUMAR, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-

The petitioner has filed this Criminal Miscellaneous Petition praying to suspend the sentence imposed on him by the learned Sessions Judge, Special Court for POCSO Act Cases, Nagercoil, in Spl.S.C.No.7 of 2021 dated 27.10.2022 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 along with other accused in Crime No.20 of 2020, on the file of the respondent/Inspector of Police, All Women Police Station, Colachel, Kanyakumari District, for the offences punishable under Sections 366 of IPC and Section 5(1) 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 the same was taken on file in Spl.S.C.No.7 of 2021 before the learned Sessions Judge, Special Court for POCSO Act Cases, Nagercoil. The petitioner was convicted and sentenced to undergo 20 years rigorous imprisonment and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) with six months simple imprisonment in case of default for the offence under Section 6 of POCSO Act, to undergo three years rigorous



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imprisonment and to pay a fine of Rs.2,000/- (Rupees Two Thousand only) with six months simple imprisonment in case of default for the offence under Section 12 of POCSO Act and to undergo five years rigorous imprisonment and to pay a fine of Rs.3,000/- (Rupees Three Thousand only) with six months simple imprisonment in case of default for the offence under Section 366 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 appearing for the petitioner would submit that the petitioner and the victim girl loved each other and on her own violation, the victim girl eloped with the petitioner. He further submitted that there was no sexual assault and as per the doctor report, there was no injury. He further submitted that the place of occurrence and time of occurrence was not established before the trial Court and the prosecution failed to collect the telephone number, call detail records for establishing the alleged telephone communication between the petitioner and the victim. This petition has been filed mainly on the ground that the petitioner is in judicial custody from 27.10.2022. Hence, the learned counsel prays for suspension of sentence of the petitioner.

4. The learned Additional Public Prosecutor appearing on behalf of the respondent vehemently opposed this petition informing that the allegations levelled



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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 Additional Public Prosecutor 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. Admittedly, the victim girl eloped with the petitioner and both had physical relationship. Based on the complaint lodged by the victim's mother, a case was registered and on 01.07.2020, the victim girl was secured. Hence, this Court is of the *prima facie* view that there are arguable points involved in this Criminal Appeal. Moreover, the petitioner has been incarcerated from 27.10.2022 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, Special Court for POCSO Act Cases, Nagercoil, in Spl.S.C.No.7 of 2021, dated 27.10.2022, alone is suspended, subject to the following stringent conditions :-



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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 POCSO Act Cases, Nagercoil;

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 and sign 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, Special Court for POCSO Act Cases, Nagercoil.

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

sd/-
08/03/2024

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11/03/2024
Sub-Assistant Registrar()
Madurai Bench of Madras High Court,
Madurai - 625 023.

RM



TO
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- 1 THE SESSIONS JUDGE,
SPECIAL COURT FOR POCSO ACT CASES, NAGERCOIL.
- 2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, COLACHEL,
KANYAKUMARI DISTRICT
- 3 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.R.ALAGUMANI, Advocate (SR-2922[I] dated 08/03/2024)

ORDER
IN
CRL MP(MD) No.2786 of 2023
in
CRL A(MD)No.129 of 2023
Date :08/03/2024

SS/SAR- /11/03/2024/6P/6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023