



Crl.MP(MD)No.5489 of 2024 in Crl.A(MD)No.459 of 2024

Crl.MP(MD)No.5489 of 2024 in Crl.A(MD)No.459 of 2024

G.ILANGOVAN, J

WEB COPY

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the Sessions Judge (Full-in-charge), Special Court for Exclusive Trial of Cases under POCSO Act, Nagercoil in Special Sessions Case No.13 of 2017, dated 23/01/2024 and enlarge the petitioner on bail, pending disposal of the above said Criminal Appeal.

2.The case of the prosecution brief:-

The victim girl was born on 13/04/2020, aged about 16 years at the time of the occurrence and studying 12th Standard in a school. The petitioner was a neighbour. In the course of time, they became lovers. That was condemned and warned by the parents. On 04/10/2016, the victim girl was kidnapped by the accused to Marunthu Kottai Malai temple. At that time, she was subjected to penetrative sexual assault. With a promise to marry her after sometime, she was sent back to the home. That was intimated to the mother by the victim girl. On the basis of the complaint given by the de-facto complainant the mother of the victim, a case in Crime No.22 of 2016 was registered by the respondent police for the offences under section 363 IPC and section 4 of POCSO Act.



Crl.MP(MD)No.5489 of 2024 in Crl.A(MD)No.459 of 2024

3.After completion of the investigation, the respondent police filed a final report and the same has been taken cognizance in Special SC No.13 of 2017 by the Special Court for POCSO Act Cases, Nagercoil.

4.On the side of the prosecution, 18 witnesses were examined and 20 documents were marked. On the side of the accused, no oral and documentary evidence was adduced.

5.At the conclusion of the trial process, the trial court found the petitioner guilty of the offences and sentenced him to undergo 10 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 6 months RI for the offence under section 4 of the POCSO Act and sentenced to undergo 2 years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo 3 years rigorous imprisonment for the offences under 363 IPC and directed all the sentences to run concurrently.

6.Challenging the conviction and sentence, this appeal is preferred by the appellant. Pending appeal, this criminal miscellaneous petition was taken out by the petitioner seeking suspension of sentence.

7.Heard both sides.



8.The learned counsel appearing for the petitioner would submit that it is a love affair between the victim girl and the petitioner; It was a consensual relationship. But it is seen that on the date of the alleged occurrence, the victim girl was 16+. So, the question of love affair and consensual may not arise *prima facie*.

9.Per contra, subsequent occurrence that occurred shows that the victim girl committed suicide, when the complaint was made by her mother. But the mother version shows that the victim was not acceptable to the complaint given by the mother. The medical examination also shows that on the alleged date, she was subjected to sexual assault and hymen was found torn.

10.Now whatever it may, in the circumstances of the case, whether the offences alleged are attracted against the petitioner is the only point to be decided in the main appeal.

11.Considering the above said facts and circumstances of the case and the period of incarceration and also considering the fact 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 criminal miscellaneous



Cr1.MP(MD)No.5489 of 2024 in Cr1.A(MD)No.459 of 2024

petition is **allowed** and the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that he shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the Sessions Judge(Full-in-Charge), Special Court for Exclusive Trial of cases under POCSO Act, Nagercoil and on further condition that the **petitioner shall stay at Tirunelveli and report before the Judicial Magistrate No.1, Tirunelveli daily at 10.30 am until further orders.**

27/08/2024

Index : Yes/No

Internet: Yes/No

er



Crl.MP(MD)No.5489 of 2024 in Crl.A(MD)No.459 of 2024

To,

- 1.The Sessions Judge,
(Full-In-Charge),
Special Court for Exclusive Trial of
Cases under the POCSO Act cases,
Nagercoil.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Inspector of Police,
All Women Police Station,
Kuzhithurai,
Kanyakumari District.
- 4.The Superintendent,
Central Prison,
Palayamkottai.



WEB COPY



CrI.MP(MD)No.5489 of 2024 in CrI.A(MD)No.459 of 2024

G.ILANGOVAN, J.,

er

CrI.MP(MD)No.5489 of 2024 in CrI.A(MD)No.459 of 2024

27.08.2024