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Crl.M.P.(MD) No.15225 of 2023

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in

Crl.A(MD) No.834 of 2022

VIVEK KUMAR SINGH, J.

The petitioner has filed this Criminal Miscellaneous Petition praying to suspend the sentence passed against him by the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai in Spl.S.C.No.77 of 2019 dated 09.11.2022 and to enlarge him on bail, pending disposal of the Criminal Appeal.

2. The case of the prosecution is that the petitioner/accused is arrayed as the first accused. On 18.03.2019, when the victim girl was waiting for an Auto after her school hours, at about 4.30 p.m., a share auto bearing registration No.TN 59 AK 9950 which was driven by the accused No.2 arrived there and that the petitioner/A1 is said to have been seated in the passenger's seat of the vehicle. Once the victim was boarded the vehicle, the petitioner/A1 started molesting her and thereby she raised a hue and cry. However, at the instigation of the petitioner/A1, the driver/A2 had not stopped the vehicle and when the vehicle reached the house of the



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victim girl, the petitioner/A1 alighted from the vehicle and asked the driver/A2 to drop the victim girl in her house. Thereafter, the victim girl informed the incident to her mother/P.W.2 and based on the complaint of her mother/P.W.2, a case has been registered in Crime No.5 of 2019 by the respondent police for the offences punishable under Sections 7, 8 and 17 of 'the Protection of Children from Sexual Offences Act, 2012' [hereinafter referred to as 'POCSO Act' for the sake of brevity] and after investigation, the offences were altered into Sections 7, 8 r/w. 16, 17 of POCSO Act and the same was taken on file in Spl.S.C.No.77 of 2019 before the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai. The petitioner/A1 was convicted and sentenced to undergo five years Rigorous Imprisonment and to pay a fine of Rs.5,000/- with one year Simple Imprisonment in case of default. Challenging the above said conviction and sentence, the petitioner has preferred the present appeal along with this criminal miscellaneous petition seeking suspension of sentence.

3. Learned counsel for the petitioner submitted that the petitioner is innocent and has not committed any offences as alleged by



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the prosecution. He submits that even the petitioner was on bail during the trial and the petitioner has been incarcerated for more than one year and four months. Learned counsel further submitted that if the petitioner is released on bail, he is ready to abide any conditions imposed by this Court and thereby, he prayed for bail.

4. The learned Government Advocate (Crl. Side) appearing for the respondent would submit that this is the third bail application filed by the petitioner. Earlier, the petitioner/A1 has moved a petition in Crl.M.P.(MD) No.15105 of 2022 and the same was dismissed by this Court on 23.02.2023. Now, the petitioner/A1 again came before this Court without any change of circumstances.

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. Considering the facts and circumstances of the case and the period of incarceration of the petitioner, this Court is of the considered



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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, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai, in Spl.S.C.No.77 of 2019 dated 09.11.2022 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, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai;

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;



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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, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai.

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

13.02.2024

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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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