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Crl.M.P.No.8302 of 2024
in Crl.A.No.729 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2025

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THE HONOURABLE Mr.JUSTICE SUNDER MOHAN

Crl.M.P.No.8302 of 2024

IN

Crl.A.No.729 of 2024

Rajesh @ Nagaraj

.. Petitioner

Vs

State rep. by
The Inspector of Police
All Women Police Station
Tiruvannamalai District
(Crime No.8/2016)

.. Respondent

Criminal Miscellaneous Petition filed under Section 398(i) Cr.P.C., to suspend the sentence imposed on the petitioner in Spl.S.C.No.38/2019 dated 26.03.2024 passed by the Sessions Judge, Special Court for cases under POCSO Act, Tiruvannamalai and enlarge the petitioner on bail pending disposal of the above criminal appeal.

For Petitioner : Ms.M.Rebecca

For Respondent : Dr.C.E.Pratap
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence of imprisonment imposed on the petitioner by the learned Sessions



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Judge, Special Court (POCSO Cases), Tiruvannamalai, by judgment dated 26.03.2024, in Spl.S.C.No.38 of 2019, pending disposal of the above criminal appeal.

2. The petitioner, who is arrayed as A-1 in the above Sessions Case, was convicted for the offences under Sections 5(l), 5(j)(ii) read with Section 6 of POCSO Act and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for two months. Aggrieved by the same, the petitioner filed Crl.A.No.729 of 2024 before this Court along with the instant miscellaneous petition seeking suspension of sentence and bail.

3. The case of the prosecution is that the petitioner and the victim were known to each other; that the victim was aged about 15 years at the time of occurrence; that on the promise of marriage, the petitioner kidnapped the victim on 20.12.2015 and made her stay in the house of A-2 and thereafter, had sexual intercourse with the victim against her wish from 20.12.2015 to 29.04.2016 and thus, committed the offences under Sections 4 and 6 of POCSO Act and Sections 376 and 506(I) IPC.



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4. The learned counsel for petitioner would submit that the evidence would reveal that the petitioner and the victim had a love affair; that the parents of the victim were aware of the said affair; that though the victim had allegedly stayed with the petitioner between 20.12.2015 and 29.04.2016 in the house of A-2, no compliant was lodged immediately after the alleged missing of the victim; that a complaint was lodged only on 07.05.2016; that the evidence of the Doctor would suggest that the victim was not subjected to forcible sexual intercourse; that the victim was not examined by the prosecution in the trial since she had committed suicide and the foetus of the victim was analysed by a Doctor and the DNA report has ruled out the paternity of the petitioner; and that considering the period of incarceration of the petitioner, the sentence imposed on the petitioner may be suspended.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent and perused the counter affidavit.



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6. The learned Government Advocate (Crl. Side) would submit that the prosecution had established the case by examining the parents of the victim and the Doctor and the non-examination of the victim due to her death, has not affected the prosecution case and hence, prayed for dismissal of the petition.

7. It is seen that though it is alleged that the victim had left the house of her parents on 20.12.2015, no complaint was lodged immediately thereafter and the complaint was lodged only on 07.05.2016. The evidence discloses that the petitioner and the victim had a love affair. In Ex.P10 DNA report, it is found that the petitioner is not the biological father of the foetus removed from the victim. That apart, there are several arguable points in the appeal. The question, as to whether the conviction can be sustained on the basis of the evidence adduced, has to be considered by this Court in the instant appeal and the appeal is not likely to be taken up in the near future. Considering the above facts and considering the period of incarceration suffered by the petitioner, this Court is inclined to grant the relief of suspension of sentence to the petitioner.

8. Accordingly, this criminal miscellaneous petition stands **allowed** and



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the sentence imposed on the petitioner is suspended till the disposal of the above Criminal appeal and the petitioner is ordered to be released on bail on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.10,000/-, with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for cases under POCSO Act, Tiruvannamalai;
- (ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhaar card or Bank pass Book and mobile numbers to ensure their identity; and
- (iii) The petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if the petitioner is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

03.01.2025

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Issue order copy by 06.01.2025

SUNDER MOHAN, J.

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To

1.The Sessions Judge
Special Court (POCSO Cases)
Tiruvannamalai

2.The Inspector of Police
All Women Police Station
Tiruvannamalai District
(Crime No.8/2016)

3.The Public Prosecutor
High Court, Madras

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