



*Crl.M.P.No.15973 of 2023
in Crl.A.No.1074 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2023

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.15973 of 2023
in
Crl.A.No.1074 of 2023

Palanisamy @ Soundarrajan

... Petitioner

Vs.

State rep. by its Inspector of Police,
All Women Police Station,
Omalur, Salem District.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence imposed in Spl.S.C.No.5 of 2021 on the file of the Court of Sessions Judge, Principal POCSO Court, Salem by judgment dated 12.09.2023 and enlarge the petitioner on bail wherein the petitioner/appellant was sentenced to undergo additional rigorous imprisonment for the period of seven years for the charge under Section 366 of IPC pending disposal of the above criminal appeal.

For Petitioner : Ms.Tamilselvi Santhanaraman
For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

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This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Sessions Judge, Principal POCSO Court, Salem by judgment dated 12.09.2023 made in Spl.S.C.No.5 of 2021 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused in Spl.S.C.No.5 of 2021 was convicted by the Trial Court for the offence under Section 366 IPC and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one year rigorous imprisonment. In this case, the petitioner was initially charged for the offence under Sections 366, 343 IPC and Section 9(1) r/w. 10 of Protection of Children from Sexual Offences Act, 2012 [POCSO Act]. The Trial Court on conclusion of trial acquitted the petitioner for the offence under Section 343 IPC and Section 9(1) r/w. 10 of POCSO Act.



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3.The case of the prosecution is that on 05.02.2020 at about 3.00 a.m., the victim girl/P.W.2 was sleeping at her house at Sedapatti, Arurpatti Village, Omalur Taluk . The petitioner/accused enticed the victim girl by saying that he will marry her and taking advantage of minor age and innocence of the victim girl, the petitioner kidnapped the victim girl from the lawful guardianship of her parents, took her to Baipur and from Baipur he took her to Nangavalli, Jalakandapuram and then to the Sangameshwarar Temple at Koodudurai, Bhavani and kept her in confinement for three days from 05.02.2020 to 08.02.2020, thereby committed the offence. On the complaint/Ex.P1 given by P.W.1/mother of the victim girl, P.W.7 registered a case. Thereafter, P.W.7 visited the place and prepared mahazars. In the meanwhile, the victim girl appeared and she was produced before the learned Magistrate and her statement under Section 164 Cr.P.C. was recorded. Thereafter, the petitioner/accused was arrested and both the victim girl/P.W.2 and the petitioner were produced for medical examination. P.W.5/Doctor examined the victim girl and P.W.6/Doctor examined the petitioner/accused. P.W.5/Doctor who examined the victim girl had given a final opinion/Ex.P11 stating that the victim girl could have been subjected



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to physical assault. Thereafter, on completion of investigation, charge sheet was filed before the Trial Court. On the side of the prosecution, P.W.1 to P.W.9 were examined, Ex.P1 to Ex.P19 were marked, M.O.1/C.D. Containing the 164 statement of the victim girl was marked and on the side of the defence, D.W.1 was examined but no documents marked. The Trial Court on the evidence and materials produced convicted the petitioner as stated above.

4.The contention of the learned counsel for the petitioner is that the Trial Court finding is that there is no wrongful restraint or forcible detention of victim girl/P.W.2 and no sexual assault committed by the petitioner, hence acquitted the petitioner from the charges under Section 343 IPC and Section 9(1) r/w. 10 of POCSO Act, but on the same set of facts convicted the petitioner for kidnapping the victim girl. The learned counsel referring to paragraph 35 of the judgment of the Trial Court would submit that P.W.2 admits her love affair with the petitioner and she asked him to marry her, thereafter only petitioner took her to various places and finally to Sangameshwarar temple, Bhavani, to reason it out with the victim that they



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can marry each other after getting approval from parents. The victim girl is categorical that she was not sexually assaulted, confirmed by P.W.5/Doctor who in her final opinion had stated that hymen was intact and there is no injuries or marks for any physical assault. He would further submit that P.W.2 had narrated the relationship between herself and the petitioner, since there was some opposition in her family, a case has been registered. He further submitted that the petitioner and the victim girl are relatives, they are within the degree of marriage, there is no prohibition for her marriage except for the age and in such circumstances, their relationship continued which was objected and now projected as though the petitioner kidnapped the victim girl. Further, the Trial Court in paragraph 39 of the judgment held that the punishment imposed on the petitioner must act as a warning to others and one should fear to commit such an offence in the society which moral policing is not not required in the facts and circumstances of the case. He further submitted that the petitioner is of tender age and his entire life would be spoiled if he is detained further. He would submit that the petitioner was in confinement for three months from 08.02.2020 to 09.05.2020 and thereafter he was in bail throughout the trial. He further



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submitted that the petitioner is a permanent resident, he will not evade from justice and as and when the appeal is taken up, he will conduct the same without any delay. Hence, he prays for granting suspension of sentence.

5.The learned Additional Public Prosecutor on the other hand opposed this petition stating that in this case P.W.1/mother of the victim girl lodged a complaint that her daughter/P.W.2 was kidnapped by the petitioner by enticement of marrying her. It is not in dispute that P.W.2/victim girl is a minor which was confirmed by the evidence of P.W.4/Headmaster who confirmed the date of birth of the victim as 27.12.2005 and he issued the School Certificate/Ex.P5. P.W.5/Doctor who examined the victim girl in her final opinion stated that the victim girl might have been subjected to physical assault. He would submit that the Trial Court on the evidence of the witnesses acquitted the petitioner for the offence under Section 343 IPC and Section 9(1) r/w. 10 of POCSO Act. He further submit that the victim girl being a minor was kidnapped by the petitioner by enticing on the promise of marriage, taken to various places for three days had been



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confirmed from the evidence of P.W.2. Hence, he prays for dismissal of this petition.

6.Considering the submissions made and on perusal of the materials, it is seen that in this case P.W.2 in her evidence admitted that there was love affair between her and the petitioner and they are relatives. The petitioner's sister and P.W.2 are classmates, the petitioner used to visit P.W.2 in her house and they were chatting till she was studying 7th and 8th Standards. When she was studying 9th Standard, objections were raised by the victim's parents which turned into repulsive act which is normal with adolescents, due to which they started continuing their conversation through mobile phone and in secluded places. The victim girl is also to be blamed for continuing the relationship. When the opposition from victim's parents was mounting, the victim forced the petitioner to takes her away and went to various places and finally to a temple and they have been staying in the temple and nothing more. Further, P.W.5/Doctor confirmed that there is no physical assault on the victim and only for this reason, the Trial Court acquitted the petitioner from the offence under Section 343 IPC and Section



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9(1) r/w. 10 of POCSO Act. In view of the above, this Court is inclined to suspend the sentence imposed on the petitioner.

7. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the Sessions Judge, Principal POCSO Court, Salem.

8. Further, the petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the Trial Court on that 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.



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9. Accordingly, this Miscellaneous Petition is ordered.

19.10.2023

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Note: Issue order copy on 19.10.2023

To

1. The Inspector of Police,
All Women Police Station,
Palladam.
2. The Sessions Judge,
Principal POCSO Court,
Salem.
3. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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