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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2022

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.M.P.No.12134 of 2021

in Crl.A.No.586 of 2021

Pushparaj

... Petitioner

Vs.

The State represented by,
Inspector of Police,
Pennagaram Police Station,
Dharmapuri District.
(Crime No.215 of 2016)

... Respondent

PRAYER: The Criminal Miscellaneous Petition is filed under Section 389 (1) r/w 439 of the Code of Criminal Procedure, pleaded to suspend the sentence made in Spl.S.C.No.23 of 2016 dated 29.10.2021 on the file of the Fast Track Mahila Court, Dharmapuri and enlarge the petitioner on bail pending Crl.A.No.586 of 2021 on the file of this Hon'ble Court in pursuance to the Crime No.215 of 2016 on the file of the respondent.

For Petitioner : Mr.V.Sakkarapani

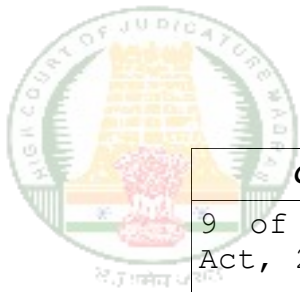
For Respondent : Mr.S.Sugendran

Government Advocate (Crl.Side)

ORDER

This Criminal Miscellaneous Petition has been filed by the Petitioner/Accused, seeking suspension of sentence of imprisonment, imposed by the judgment dated 29.10.2021 passed in Spl.S.C.No.23 of 2016 by the Fast Track Mahila Court, Dharmapuri.

2. In and by the judgment of the Trial court, the petitioner/accused was convicted and sentenced as follows:-



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Offence u/s	Conviction & Sentence
9 of Child Marriage Act, 2006	3 months R.I and to pay a fine of Rs.1000/-, in default, undergo one month S.I.
363 IPC	2 years R.I and to pay a fine of Rs.2,000/-, in default, undergo two months S.I
6 of Protection of Children from Sexual Offences Act	10 years R.I and to pay a fine of Rs.5,000/-, in default, undergo three months S.I

against which, the present Criminal Appeal has been filed.

3. The submissions of the learned counsel appearing for the petitioner are as under:-

(a) The petitioner and the victim are relatives and both of them have eloped on the persistence of the victim since the parents of the victim had pressurized her to marry her uncle against her wish. The Respondent had taken the victim girl to the Judicial Magistrate after she had returned home and statement has been recorded from the victim girl on 22.07.2016. As per the statement recorded under Section 164 Cr.P.C., the victim girl had stated that she had completed 12th standard and during the month of April, while she was at her home, her parents had compelled her to get married to her uncle one Bothiraj, since, she did not like the marriage with the said Bothiraj, she had told her parents that she was not interested in marrying him. Her parents have forced her and her uncle also threatened her to marry him. She had further deposed that while she was studying tenth standard in Sompatti Government High School, she fell in love with the petitioner and that she had studied 11th and 12th standard at Paramvir Matriculation School and the petitioner had studied at Thaalampallam Government Higher Secondary School.

(b) She had further deposed that since her parents had forced her to marry her uncle, she had called the petitioner and told him that they would elope from the house and after the inmates in the house had gone to sleep, she had gone to bus stand and from there, she and the petitioner had travelled to Mechery and that they have stayed in a relative's house and on the next day, they got married at Chinnathirupathi, Mechery and after few days, her relatives had came and obtained an undertaking from her that they have severed their relationship with her. Thereafter, her father had given a complaint in Deevatipatty Police Station and that the police enquired them and send them to Papparapatti Police Station and the police had send her to her grand mother's place at Boodhinatham.



(c) She had further deposed that she was longing to see the petitioner and that on 18.06.2016, she had called the petitioner and thereafter, on the same day, she had compelled the petitioner to take her out and that they stayed in relatives house and that she forced the petitioner to have physical affair with her to prevent her parents from separating them.

(d) While, this is so, on compulsion, the victim was married to somebody and later on tutoring, she has resiled from the earlier statement. The prosecution has not proved the age of the victim by marking the Birth Certificate issued by the local authority. The respondents had only marked the secondary evidence through the Head Master of the school and no reason has been stated by the prosecution for non marking of the birth certificate of the victim girl. The medical evidence also does not support the case of the prosecution. The prosecution has failed to prove the age of the victim to be less than 18 beyond reasonable doubt.

(e) The petitioner/ accused has got a fair chance of succeeding in the Criminal Appeal. There are arguable points available in the Criminal Appeal, however, as the Appeal is not likely to be taken for final hearing in the near future, the sentence imposed against the petitioner/Accused may be suspended and the petitioner may be enlarged on bail.

4. The Respondent had filed a counter. Mr.S.Sugendran, learned Government Advocate (Crl.Side) would submit that the petitioner and the victim are related to each other and the petitioner had enticed the victim three years prior to 05.07.2016, under the pretext of loving her with the intent to exploit her sexually. On 08.06.2016, the accused had taken the victim girl/Annakili to Deevatipatty and was living along with her and subsequently, on 14.06.2016, they were traced and the elders of the locality, had sent the victim along with her parents. In the course of the same transaction, the accused had once again taken the victim girl on 08.06.2016 to Mecheri and on the next day, the petitioner had married the victim at Chinnathirupathi, Mecheri, knowing that she is minor and thereafter, he had committed the offence. He would further submit that the prosecution has proved the case by examining the 25 witnesses and marking Ex.P1 to 19.

5. Heard the learned counsel for the parties and perused the materials on record.

6. In this case, the respondents had marked the Ex.P9 through PW21/Head Master of the Victim girl. PW21, in his cross examination deposed that there is no detail with regard to the date on which the victim girl was admitted in his school. This Court is of the opinion that there are arguable points involved in this case and the petitioner has made out grounds for suspension of sentence.



7. Considering the facts and circumstances of the case and also considering the submissions of the learned counsel for the petitioner, this Court is of the view that the sentence of imprisonment can be suspended on certain conditions. Accordingly, till the disposal of the Criminal Appeal, suspension of sentence and bail are granted, on the following conditions :-

i. The petitioner shall execute a bond for a sum of Rs.15,000/- (Rupees Fifteen Thousand only), with two sureties, each for a like sum to the satisfaction of the Trial Court.

ii. The petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m., until further orders.

8. The Criminal Miscellaneous Petition is ordered accordingly.

-sd/-
11/01/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE FAST TRACK MAHILA COURT,
DHARMAPURI.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
PENNAGARAM POLICE STATION,
DHARMAPURI DISTRICT.



4 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

+1 C.C. to M/S.V.SAKKARAPANI Advocate on payment of necessary
charges SR.NO.523

Order

in
CRL MP.12134/2021
in
CRL A.586/2021

Date :11/01/2022

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TA-12/01/2022