



WEB COPY



*Crl.M.P.No.12382 of 2023
in Crl.A.No.879 of 2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM:

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

Crl.M.P.No.12382 of 2023

in

Crl.A.No.879 of 2023

Ranjith

... Petitioner

Vs.

The State
Rep. by Inspector of Police,
All Women's Police Station,
Nannilam

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(2) of Cr.P.C to suspend the operation of the sentence passed in Judgment dated 28.09.2021 in Spl.S.C.No.30 of 2019 on the file of the Sessions Court, (Fast Track Mahila Court), Tiruvarur and enlarge the petitioner on bail.

For Petitioner : Mr.Arul Siva

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor



WEB COPY



*Crl.M.P.No.12382 of 2023
in Crl.A.No.879 of 2023*

ORDER

The petitioner who is the accused in Spl.S.C.No.30 of 2019 and convicted by the trial court by judgment dated 28.09.2021 and sentenced to five years R.I. and to pay a fine of Rs.5,000/-, in default to undergo six months R.I. for the offence under section 10 r/w 9(m) of POCSO Act and to undergo two years R.I. and to pay a fine of Rs.1,000/-, in default to undergo three months R.I has filed the present appeal and suspension of sentence.

2. The gist of the prosecution case is that on 21.07.2019, PW1, the defacto complainant lodged a complaint before the respondent police stating that she is residing at Madhakovil Street, Sarguneswaram, Kudavasal, Thiruvarur along with her husband and two daughters. Her elder daughter/victim in this case studying fifth standard. On 19.07.2019, there was some power cut in the house of defacto complainant and hence, she had given her mobile phone for charging in the house of the petitioner. To collect the charged phone, she sent her daughter/victim girl at about 7.00



*Crl.M.P.No.12382 of 2023
in Crl.A.No.879 of 2023*

p.m., and her daughter came late. When she enquired, the victim girl/her daughter stated that the petitioner who was standing behind the car, tightly hugged her, bitten her lips, kissed her face and thereafter threatened her not to disclose the same. Next day, when the victim girl had gone to purchase some groceries from Balu Nadar Grocery store, the petitioner had called the victim and again threatened her. Hence, complaint had been lodged. On receipt of the complaint, FIR Registered. The Investigating Officer visited the scene of occurrence, recorded the statement of the witnesses, prepared observation mahazar and rough sketch, collected the documents, arrested the accused and thereafter, on completion of investigation filed charge sheet before the trial court. Before the trial court, PW1 to PW9 examined, Ex.P1 to Ex.P8 marked. On the side of the accused, neither any witness examined nor any document filed. The trial court on conclusion of the trial, had convicted the petitioner as stated above.

3. The contention of the petitioner is that the petitioner has been falsely implicated in this case. There was some dispute between the victim's father and the petitioner and they were not in good terms. In such a case,



*Crl.M.P.No.12382 of 2023
in Crl.A.No.879 of 2023*

WEB COPY

whether the mobile phone could have been given by the victim's mother to charge in the petitioner's father's house. Further the complaint has been lodged against the victim's father, which is not denied by the defacto complainant PW1. The relationship between the petitioner and victim family is strained. In such circumstances, the case as projected by the prosecution is not possible. The counsel further submitted that the petitioner's house was set on fire by the defacto complainant's husband, which is not in dispute. The petitioner from the date of conviction and prior to that, he had been in prison from 02.02.2021 to 03.03.2021 and totally, he is in prison for more than two years. Hence, prayed for suspension of sentence.

4. The learned Additional Public Prosecutor had filed his counter and submitted that in this case, PW1 is the defacto complainant and on her complaint, the case was registered. After registration of the case, PW9 took up the investigation, went to the scene of occurrence and examined the victim PW2 and her mother PW1. In the presence of PW3, observation mahazar and rough sketch prepared and thereafter, the accused was arrested



*Crl.M.P.No.12382 of 2023
in Crl.A.No.879 of 2023*

WEB COPY

in the presence of PW4. PW5 and PW6 are the witnesses before whom the confession was recorded, not supported the case of the prosecution. PW7 is the Grocery shop owner, who stated that the victim had come to the shop on 20.07.2019. PW8 is the Head Master of the school, who had issued the school Bonafide Certificate confirming that the victim was minor at the time of occurrence and her date of birth is 29.05.2010. On conclusion of the trial, the trial court had rightly convicted the petitioner as stated above. Hence, he opposed the suspension of sentence.

5. Considered the submissions made on either side and perused the materials available on record. It is seen that PW1 in her evidence admits that the house of the petitioner had been set on fire and the wife of the petitioner had also lodged a complaint against the husband of PW1/the victim's father. There seems to be no good relationship between the petitioner's family and the victim. In such circumstances, the reason given for the victim going to the petitioner's father's house to collect the mobile phone is highly doubtful. Though PW1 states the victim's lips was bitten and swollen, admittedly, in this case, the victim was not taken to the hospital for any medical



*Crl.M.P.No.12382 of 2023
in Crl.A.No.879 of 2023*

examination. Further there are arguable points in the appeal. It would take some time for the appeal to be taken for final hearing.

6. Considering the above facts and that the petitioner is in prison for more than two years, this court is inclined to grant suspension of sentence to 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.5,000/- (Rupees Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Sessions Court (Fast Track Mahila Court), Thiruvavarur.

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.



WEB COPY



*Crl.M.P.No.12382 of 2023
in Crl.A.No.879 of 2023*

9. Accordingly, this Miscellaneous Petition is ordered.

09.11.2023

nl

Note: Issue order copy on 09.11.2023

To

1. The Sessions Judge (Fast Track Mahila Court), Thiruvavur.
2. The nspector of Police,
All Women's Police Station,
Nannilam
3. The Public Prosecutor,
High Court, Madras.



WEB COPY



*Crl.M.P.No.12382 of 2023
in Crl.A.No.879 of 2023*

M. NIRMAL KUMAR, J.

nl

**Crl.M.P.No.12382 of 2023
in
Crl.A.No.879 of 2023**

09.11.2023