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Crl.M.P.No.2775 of 2023

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in

Crl.A.No.235 of 2021

M.SUNDAR, J.

and

R.SAKTHIVEL, J.

(Order of the Court was made by M.SUNDAR,J.,)

Captioned 'Criminal Miscellaneous Petition' [hereinafter 'Crl.MP' for the sake of brevity, convenience and clarity] has been filed in this Court on 02.02.2023 *inter alia* under Section 389 of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C.' for the sake of brevity and clarity] with a prayer for suspension of sentence / bail qua conviction and sentence dated 17.04.2021 in S.C.No.105 of 2016 on the file of 'Mahila Court, Chennai' which shall hereinafter be referred to as 'trial Court'.

2. Factual matrix in a nutshell i.e., case of prosecution which was believed by the trial Court is that on 12.05.2014, the injured (PW1) before the trial Court was abused with obscene words and assaulted with a knife taken out from trouser pocket of the accused resulting in grievous



Crl.M.P.No.2775 of 2023

injuries; that there was love affair between the lone accused and injured / victim; that this occurrence on 12.05.2014 was in a shop in the city of Chennai; that charges framed were under Sections 341 and 307 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for the sake of brevity]; that in the trial Court, the injured / victim, who deposed as PW1 has not supported the case of prosecution; that the trial Court has convicted the accused on the basis of chief-examination of PW1 by saying that PW1 was not cross examined on the same day i.e., chief-examination deposition day; that PW1 was cross-examined after her marriage; that the trial Court proceeded on the assumption that PW1 did not support the case of prosecution fearing possibility of being repeatedly called to Court to testify which would affect her marriage / married life; that the trial Court proceeded on the basis that the victim is now happily married; that captioned Crl.MP has been filed after one dismissal of an earlier suspension of sentence petition and after withdrawal of another petition.

3. Before proceeding further, we deem it appropriate to set out the charges and sentences qua conviction / sentence of trial Court.



Crl.M.P.No.2775 of 2023

<i>S.No.</i>	<i>Charge</i>	<i>Sentence</i>
1	Section 341 of IPC	One month simple imprisonment
2	Section 307 of IPC	Life imprisonment with fine of Rs.5,000/- and three months simple imprisonment if there is default in payment of fine.

4. Mr.R.Sankarasubbu, learned counsel appearing on behalf of petitioner submitted that the conviction is weak as the victim herself did not support the case of prosecution and therefore, the petitioner verily believes that he has fair chances of acquittal in the main appeal.

5. Mr.R.Muniyapparaj, learned Additional Public Prosecutor (assisted by learned counsel Mr.Sylvester John) submitted to the contrary by saying that cross examination was more than 2 years after the victim deposed in chief and therefore, the conviction can certainly be sustained. Learned Prosecutor also submitted that one earlier suspension of sentence petition was withdrawn and another came to be dismissed.

6. We carefully considered submissions of both sides.



Crl.M.P.No.2775 of 2023

WEB COPY

7. It is *prima facie* palpable that there is bright possibility of the conviction and sentence of trial Court being interfered with i.e., the conviction of trial Court which proceeded on the basis of chief-examination of PW1 though PW1 victim did not support the case of prosecution in the cross-examination. This course was adopted by trial Court primarily on the ground that cross-examination was after marriage of PW1 and that she did not support the case of prosecution fearing that she might be repeatedly called to Court to testify which would affect her marriage / married life. This assumption has been articulated by trial Court in paragraph No.27 of judgment which is under appeal. As regards conduct of the petitioner, post conviction and sentence, there is nothing to demonstrate that there has been any prison offence or that it is not blemishless.

8. As regards the test for suspension of sentence legal drill, this Bench reminds itself of ***Omprakash*** principle [***Omprakash Sahni Vs. Jai Shankar Chaudhary & another*** reported in ***2023 SCC OnLine SC 551***] laid down by Hon'ble Supreme Court recently on 02.05.2023. In



Crl.M.P.No.2775 of 2023

Omprakash principle, Hon'ble Supreme Court had held that what has to be looked into is something palpable qua fair chances of acquittal for the convict, the only rider is that it should not be by re-appreciation of evidence. We also notice that the appeal being taken up in its regular course would consume some time and this is a fit case for suspension of sentence and bail if **Omprakash** principle is applied to case on hand.

9. We deem it appropriate to put in a condition that the petitioner for the present would stay well away from the jurisdiction of scene of occurrence (Chennai) as well as Vellore where (we are informed) the victim was residing in matrimonial home post marriage for some time.

10. In the light of the narrative, discussion and dispositive reasoning thus far, the following order is made:

(i) The sentence handed down to petitioner qua judgment and conviction dated 17.04.2021 in S.C.No.105 of 2016 on the file of the trial Court i.e., learned Sessions Judge, Mahila Court, Chennai, is



Crl.M.P.No.2775 of 2023

suspended and the bail is subject to conditions which are set out in other sub-paragraphs infra;

(ii) The petitioner shall deposit the fine amount in the trial Court if not already deposited;

(iii) The petitioner shall execute bonds of Rs.25,000/- [Rupees Twenty Five Thousand only] with two sureties of whom one should be a blood relative (each for a like sum) to the satisfaction of XIV Metropolitan Magistrate, Egmore.

(iv) The petitioner shall stay in Villupuram District and petitioner shall not move out of Villupuram District without leave of the Mahila Court (Fast Track Mahila Court), Villupuram District;

(v) The petitioner shall report before the learned Sessions Judge, Mahila Court (Fast Track Mahila Court), Villupuram District on the first working day of every week at 10.30 a.m pending disposal of the appeal; and

(vi) The petitioner shall not enter the area



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Crl.M.P.No.2775 of 2023

where the victim is residing and / or working.

Captioned Crl. MP is disposed of in the aforesaid manner with the aforesaid directives.

[M.S.,J.] [R.S.V.,J.]
15.06.2023

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P.S:

Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai.

M.SUNDAR, J.
and



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Crl.M.P.No.2775 of 2023

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