



Crl.MP No.4476 of 2023 in
Crl.A.No.341 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.M.P.No.4476 of 2023

in

Crl.A.No.341 of 2023

S.Sathiyaraj

... Petitioner

Vs.

State Rep
Inspector of Police,
Railway Police Station,
Egmore, Chennai

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence imposed in S.C.No.449 of 2018 on the file of the Magalir Neethi Mandram at Chennai and enlarge the petitioner on bail pending disposal of criminal appeal.



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For Petitioner : Mr.M.Anandaraj
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This petition is filed seeking to suspend the sentence imposed on the petitioner in S.C.No.449 of 2018 passed by the learned Sessions Judge, Mahalir Neethimandram, Allikulam, Chennai dated 21.02.2023.

2.The Trial Court, by judgment dated 21.02.2023 passed in S.C.No.449 of 2018 convicted and sentenced the petitioner as extracted hereunder.

Rank of the accused	Conviction under Section	Sentence
Sole Accused	376(1) r/w 511 of I.P.C	The accused shall undergo Rigorous Imprisonment for 5 years and to pay a fine of Rs.10,000/-, in default, to undergo simple Imprisonment for 6 months.

3.Challenging the judgment of conviction and sentence, the



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WEB COPY petitioner preferred the present Criminal Appeal along with the instant petition, seeking to suspend the sentence of imprisonment.

4.The learned counsel for the petitioner submitted that the respondent-Police prosecuted the accused for the offence punishable under Section 376(1) r/w 511 of I.P.C for attempting to commit a rape. After the trial, the trial Court found guilty for the offence under Section 376(1) r/w 511 of I.P.C and convicted and sentenced the petitioner as stated above. Further, he contended that the victim was not examined in this case and the respondent Police reported that they are unable to find out the whereabouts of the victim and under these circumstances, the trial Court convicted the accused. He further submitted that now the petitioner is still in judicial custody.

5.The learned counsel for the petitioner submitted that the



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judgment of the Court below is contrary to law, weight of evidence and probabilities of the case. He further submitted that there are arguable points in the criminal appeal and the petitioner has every chance to succeed in this Criminal Appeal and hence, prayed for suspension of sentence.

6.The learned Additional Public Prosecutor conceded that the victim was not examined in this case and the respondent-Police reported that the whereabouts of the victim could not be traced.

7.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent and perused the impugned judgment and the materials on record.

8.On perusal of the records, it reveals that the learned Sessions



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WEB COPY Judge, in paragraph 5.1 of the judgment, has recorded that the victim was not examined and the Deputy Superintendent of Police, Government Railway Police reported that the whereabouts of the victim could not be traced. Further, the accused is still in custody from 21.02.2023. In the circumstances, there is arguable point in favour of the petitioner.

9.Taking into consideration of the above submission of the learned counsel appearing on both sides, this Court finds that the petitioner has substantial grounds in this Criminal Appeal, which require detailed appraisal. Therefore, this Court is of the view that the petitioner is entitled to the relief of suspension of sentence.

10. Accordingly, it is ordered as follows.



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WEB COPY (i) The substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner *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 learned Sessions Judge, Mahalir Neethimandram, Chennai -3.*

(ii) The petitioner and his sureties shall affix their photographs and Left Thumb Impression in the surety bond and the concerned Court may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

(iii) The petitioner shall appear before the Trial Court as and when required.

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1. The Magalir Neethi Mandram at Chennai
2. The Superintendent, Central Prison, Puzhal.
3. The Public Prosecutor, High Court of Madras, Chennai.
4. The Inspector of Police, Railway Police Station, Egmore, Chennai



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V.SIVAGNANAM, J.,
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