



Crl.M.P.No.5370 of 2023 in Crl.A.No.421 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2023

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.5370 of 2023
in Crl.A.No.421 of 2023

Elangovan
S/o Ponnai

.. Petitioner

-VS-

State rep by
The Inspector of Police
Vikramangalam Police Station
Ariyalur District

.. Respondent

Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure to suspend the sentence imposed in S.C.No.140 of 2019 on the file of the learned Fast Track Mahila Court, Ariyalur dated 02.09.2022 and enlarge the petitioner on bail, pending disposal of the appeal.

For Petitioner :: M/s Vijayalakshmi K.Rajaratnam

For Respondent :: Mr.A.Gokulakrishnan
Additional Public Prosecutor



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ORDER

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

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The petitioner/accused has filed the appeal challenging the conviction and sentence imposed by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur vide judgment dated 02.09.2022 in S.C.No.140 of 2019 directing him to undergo rigorous imprisonment for life and also to pay a fine of Rs.25,000/-, in default to undergo simple imprisonment for a period of 3 years for the offence under Section 376(2)(n) of IPC; to undergo rigorous imprisonment for two years and also to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of 3 months for the offence under Section 506(ii) of IPC, which are ordered to run concurrently. Pending the appeal, the petitioner has filed the present miscellaneous petition seeking to suspend the sentence and enlarge him on bail.

2. The case of the prosecution is that the victim girl, aged 21 years, was threatened and raped for seven months by the accused; that she conceived and gave birth to a seven month old baby; that the baby died due to ill-health in the hospital. It is the case of the prosecution that the victim girl, who is innocent and gullible, was threatened and raped by the accused, as she is afraid of strong persons. Pursuant to the investigation by the



respondent, the petitioner was ultimately tried in S.C.No.140 of 2019 and the trial Court has convicted and sentenced the appellant for the offences as stated above.

3. The learned counsel appearing for the petitioner submitted that the prosecution has not established the commission of offence under Section 376 of IPC. Referring to the entries in the accident register, the learned counsel submitted that the victim girl had informed the doctor that she had sexual intercourse with a known person by name Arun, who is a native of Tiruppur. During the course of evidence, P.W.1 (victim girl) has stated that when she was grazing cattle and goats, the petitioner called her for sexual intercourse and she submitted to him. There was no resistance. It is also her evidence that the petitioner threatened her not to reveal the same to anyone. It is her assertion that she was subjected to such acts on several occasions. She admits that he revealed the name of one Arun from Tiruppur as the person with whom she had sexual intercourse and conceived. However, she changed her version after a period of three months.

4. We have also heard the learned Additional Public Prosecutor appearing for the respondent and also perused the materials available on



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5. As rightly contended by the learned counsel appearing for the petitioner, the evidence of P.W.1 has not suggested that the accused had sexual intercourse without her consent. In view of the inconsistencies in the evidence of P.W.1, which does not inspire confidence, and the fact that the victim girl had a different version before lodging the police complaint, this Court finds that the petitioner has established a prima facie case for suspension of sentence.

6. Accordingly, this criminal miscellaneous petition stands allowed and the substantive sentence of imprisonment imposed on the petitioner is suspended and he is granted bail on the following conditions:-

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) with two sureties, of whom one should be a blood relative, each for a likesum, to the satisfaction of the learned Sessions Judge, Fast Track Mahila Court, Ariyalur.
- (ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Sessions Judge may obtain a copy of their Aadhar card or Bank Pass Book and mobile numbers to ensure their identity; and
- (iii) The petitioner shall appear before the trial Court on the first working



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day of every 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 any 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.

(S.S.S.R.,J.) (S.M.,J.)
01.11.2023

SS

To

1. The Sessions Judge, Fast Track Mahila Court, Ariyalur
2. The Inspector of Police, Vikramangalam Police Station, Ariyalur District
3. The Superintendent, Central Prison, Tiruchirappalli
4. The Public Prosecutor, High Court, Madras



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AND
SUNDER MOHAN, J.

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