



WEB COPY



Crl.M.P.No.8467 of 2023 in Crl.A.No.1090 of 2022

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.8467 of 2023  
in Crl.A.No.1090 of 2022

Bhoopathi Raja  
S/o Balusamy

.. Petitioner

-vs-

State by: The Inspector of Police  
All Women Police Station  
North, Tiruppur District  
(Crime No.33 of 2017)

.. Respondent

Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure to suspend the sentence imposed by the learned Sessions Judge, Magalir Needhimandram (Fast Track Mahila Court), Tiruppur in Special S.C.No.17 of 2018 dated 31.12.2019 and enlarge the petitioner on bail, pending disposal of the appeal.

For Petitioner :: Mr.P.Pugalenth

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



**ORDER**

(Order of the Court was made by SUNDER MOHAN, J.)

WEB COPY

The petitioner/accused was tried in Spl.S.C.No.17 of 2018 by the learned Sessions Judge, Magalir Needhimandram (Fast Track Mahila Court), Tiruppur and was convicted and sentenced to undergo the imprisonment, which are ordered to run concurrently, vide the impugned judgment dated 31.12.2019, as detailed below:-

| <i>Convicted for offence u/s</i> | <i>Sentence</i>                                        |
|----------------------------------|--------------------------------------------------------|
| 366 IPC                          | 7 years R.I., and fine of Rs.1000/-, i/d 1 year R.I.   |
| 5(l) r/w 6 of POCSO Act          | R.I., for life and fine of Rs.5000/-, i/d 2 years R.I. |

Challenging the conviction and sentence aforesaid, the petitioner has filed the appeal and pending the appeal, he has taken out the present petition seeking to suspend the sentence and enlarge him on bail.

2. The case of the prosecution is that the petitioner and the victim (aged 16 years at the time of occurrence) resided in the same compound in different houses at Tiruppur; that the petitioner was a married man and after his wife left to her mother's house for delivery, the petitioner proposed his love to the victim; he enticed her stating that he would marry her and on 23.11.2017, he took the victim from the school with intent to have sexual intercourse and thereafter took her to his native village at Koothampatty,



Dindigul District and had intercourse with the victim girl repeatedly; that on 17.12.2017, the accused brought the victim back to Tiruppur and left her near a park and thereafter abandoned her; that the victim complained about the occurrence to her father, who lodged a complaint. Pursuant to the investigation by the respondent, the victim was tried before the Special Court for the offence under Section 366 of IPC and Section 5(l) read with Section 6 of the POCSO Act and convicted and sentenced to undergo the imprisonment as stated above.

3. The learned counsel appearing for the petitioner would submit that the victim's evidence is contrary to the prosecution case; that the evidence of the doctors, P.Ws.6 & 7 would show that the prosecution case is improbable; that in view of the inconsistent statement made by P.W.2, the victim, the trial Court ought not to have relied upon her testimony to convict the petitioner; that in any case, the sentence of life imprisonment is excessive and the learned trial Judge ought to have imposed a minimum punishment.

4. The learned Additional Public Prosecutor, per contra, submitted that the victim has clearly stated about the occurrence and there is no reason



to disbelieve the evidence of the victim minor girl; that the accused was a married man and had exploited the innocence of the victim and minor variations in her evidence would not shake her credibility.

5. On perusal of the records, we find that the petitioner was in custody during trial from 17.12.2017 to 25.04.2018 and thereafter, he is in custody from 26.09.2019. He has served almost five years of sentence. Considering the submissions made by the learned counsel for petitioner and the period of incarceration suffered by the petitioner coupled with the fact that the appeal is not likely to be taken up for hearing in the near future, this Court is inclined to suspend the sentence imposed on the petitioner.

6. Accordingly, the 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, Magalir Needhimandram (Fast Track Mahila Court), Tiruppur.
- (ii) The sureties shall affix their photographs and Left Thumb Impression



WEB COPY



Crl.M.P.No.8467 of 2023 in Crl.A.No.1090 of 2022

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 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, Magalir Needhimandram (Fast Track Mahila Court), Tiruppur
2. The Inspector of Police, All Women Police Station, North, Tiruppur
3. The Superintendent, Central Prison, Coimbatore
4. The Public Prosecutor, High Court, Madras



WEB COPY



Crl.M.P.No.8467 of 2023 in Crl.A.No.1090 of 2022

S.S.SUNDAR, J.  
AND  
SUNDER MOHAN, J.

SS

Crl.M.P.No.8467 of 2023  
in Crl.A.No.1090 of 2022

01.11.2023