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*Crl.M.P.No.16494 of 2023
in Crl.A.No.1121 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2023

CORAM:

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

Crl.M.P.No.16494 of 2023
in
Crl.A.No.1121 of 2023

Marchlin

... Petitioner

Vs.

State rep. by Inspector of Police,
All Women Police Station,
Palladam.
Crime No.3 of 2021

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence and enlarge the petitioner on bail imposed in Spl.S.C.No.83 of 2021 dated 17.08.2023 on the file of the Sessions Judge, Magalir Neethi Mandram, Fast Track Mahila Court, Tirupur, pending disposal of the above criminal appeal.

For Petitioner : Mr.M.Vignesh

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER



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This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Sessions Judge, Magalir Neethi Mandram, Fast Track Mahila Court, Tirupur by order dated 17.08.2023 made in Spl.S.C.No.83 of 2021 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused in Spl.S.C.No.83 of 2021 was convicted by the Trial Court for the offence under Section 7 r/w. 8 of POCSO Act, 2012 and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.3,000/-, in default to undergo three months rigorous imprisonment.

3.The gist of the case is that the petitioner herein is running a Chicken stall in the name of 'Rajam Broilers'. On 18.04.2021 at about 1.45 p.m., the victim girl/P.W.1 along with her brother came to the petitioner's shop. At that time, the petitioner asked the victim girl's brother to get him Beedi and sent him away. Taking advantage of the loneliness of the victim girl, the



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petitioner called her inside the shop which the victim girl had refused.

Thereafter, the victim girl was pulled inside the shop and she was molested by the petitioner. Immediately, the victim girl came out, informed her uncle's son who had come there and further, informed her mother about the incident. Thereafter, complaint was lodged with the respondent police and a case in Crime No.83 of 2021 was registered. The accused was arrested, and his confession statement was recorded. The Investigating Officer visited the scene of occurrence, prepared observation mahazar and rough sketch, examined the witnesses present in the scene of occurrence, examined the victim girl, statement of the victim girl was recorded by the learned Magistrate under Section 164 Cr.P.C. and the victim girl was produced before P.W.6 for medical examination. P.W.6/Doctor examined the victim girl and issued Ex.P5 and Ex.P6. Thereafter, on completion of investigation, charge sheet was filed before the Trial Court. On the side of the prosecution, P.W.1 to P.W.9 were examined, Ex.P1 to Ex.P12 were marked and on the side of the defence, no witness examined and no documents marked. The Trial Court on the evidence and materials produced convicted the petitioner as stated above.



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4.The contention of the learned counsel for the petitioner is that the petitioner had been falsely implicated in this case. It is an admitted case that there was a dispute between the petitioner and P.W.2/mother of the victim girl and they were not in talking terms. In such circumstances, sending the victim girl/P.W.1 to the petitioner's shop is highly impossible. He would submit that in this case, the uncle's son of P.W.1 to whom immediately the victim had informed about the incident has not been examined as witness and even the brother of the victim girl who accompanied the victim girl has also not been examined. He would further submit that the petitioner and P.W.2/mother of the victim girl had some relationship which was objected by the petitioner's wife who picked up a fight with P.W.2 which caused embarrassment to her, hence a false case has been foisted against the petitioner. He further submitted that from the medical evidence and statement of Doctor, it is seen that there are no marks or any abrasions found in the victim girl. He would further submit that the victim girl being a minor had been tutored by her mother/P.W.2 and she has deposed as per her mother's wish. He would submit that the Trial Court had earlier suspended



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the sentence imposed on the petitioner till 17.09.2023 and immediately appeal has been filed along with a petition for suspension of sentence.

5.The learned Additional Public Prosecutor submits that the victim is a minor girl aged about 14½ years, who on the fateful day went to the petitioner's shop along with her brother, the petitioner in a deceitful manner asked her brother to get Beedi and sent him away. Taking advantage of the fact that the victim girl is being alone, the petitioner pulled her inside the shop and molested her. Thereafter, the victim girl got relieved from him and raised alarm, at that time the uncle's son of the victim girl came there for rescue and thereafter, the victim girl informed about the incident to P.W.1, who lodged a complaint. P.W.7 registered a case, examined the witnesses, prepared observation mahazar and rough sketch and produced the victim before the Doctor as well as the Magistrate. He would submit that the victim both in her statement and in the evidence before the Trial Court had clearly stated about the overt act of the petitioner. The Trial Court being satisfied with the evidence and materials produced had rightly convicted the petitioner. Learned Additional Public Prosecutor fairly submitted that the



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Trial Court had suspended the sentence of the petitioner.

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6.Considering the submissions made and on perusal of the materials, this Court finds that there are some contradictions in the statement of the victim girl under Section 164 Cr.P.C. as well as before the Trial Court. It is the admitted case that P.W.2/mother of the victim girl and the petitioner were not in talking terms and there was some enmity between them. In such circumstances, it is highly doubtful as to whether the victim girl would have gone to the petitioner's shop alone, more so, the victim girl's brother who accompanied her would have gone to a shop on the request of the petitioner leaving the victim girl alone. The specific case of the petitioner is that his wife picked up fight with P.W.2 which caused simulation and loss of face to P.W.2. In view of the above and further taking into consideration of the fact that the Trial Court had already suspended the sentence, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.

7.Accordingly, the Substantive Sentence of Imprisonment imposed on



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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.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the Sessions Judge, Mahalir Needhi Mandram, Fast Track Court, Tiruppur.

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.

9.Accordingly, this Miscellaneous Petition is ordered.

17.10.2023

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Note: Issue order copy on 18.10.2023



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M. NIRMAL KUMAR, J.

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To

- 1.The Inspector of Police,
All Women Police Station,
Palladam.
- 2.The Sessions Judge,
Magalir Neethi Mandram,
Fast Track Mahila Court, Tirupur
- 3.The Public Prosecutor,
High Court, Madras.

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