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*Crl.M.P.No.15202 of 2023
in Crl.A.No.1039 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2023

CORAM:

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

Crl.M.P.No.15202 of 2023
in
Crl.A.No.1039 of 2023

Arockiyasamy @ Suresh

... Petitioner

Vs.

The State rep. by
The Inspector of Police,
All Women Police Station,
Thirukoilur.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence imposed upon the petitioner in S.C.No.57 of 2018 on the file of the learned Sessions Judge, Mahila Court [FTMC], Villupuram dated 23.08.2023 and enlarge the petitioner on bail pending disposal of the appeal.

For Petitioner : Mr.V.Krishnamoorthy

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Sessions Judge, Mahila Court [Fast Track Mahila Court], Villupuram by order dated 23.08.2023 made in S.C.No.57 of 2018 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused was convicted by the Trial Court for the offence under Sections 376 and 417 of IPC and sentenced him to undergo ten years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo three months simple imprisonment for the offence under Section 376 IPC and to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month simple imprisonment for the offence under Section 417 IPC. All the sentences to run concurrently. Against which, the present appeal is filed along with suspension of sentence.



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3.The case of the prosecution is that the petitioner was running a mobile shop in which the defacto complainant was employed for more than six years, at that time, the petitioner expressed his love and the victim girl/P.W.1 also accepted the same. The petitioner convinced the victim girl and forced her to have physical relationship. Believing the words of the petitioner that he will marry her, the victim girl also accepted the same and they had physical relationship. Thereafter, P.W.1 insisted the petitioner to marry her but the petitioner was giving one reason or other and delaying the same. Finally on 10.01.2016 the petitioner closed his shop and he was unable to be found. Prior to it, the petitioner informed that he is going to marry another girl of his choice. When the victim girl questioned the same, she was abused and threatened. Left with no other option, the victim girl lodged a complaint and a case was registered.

4.Before the Trial Court, on the side of the prosecution P.W.1 to P.W.9 were examined and Ex.P1 to Ex.P8 were marked. On the side of the petitioner/accused, no witness was examined and no documents were marked. On conclusion of the trial, the Trial Court convicted the petitioner



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as stated above.

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5.The contention of the learned counsel for the petitioner is that from the evidence of P.W.1 it is clear that the petitioner was very much interested in marrying the victim girl and in fact, he went to the house of the victim girl asking for marriage, but the parents of the victim girl opposed, for the reason that the petitioner is a Christian. Despite the same, P.W.1 continued her relationship with the petitioner and they had physical relationship. He would submit that the victim girl is a major, educated and knowingly she allowed the petitioner to continue his relationship with her, the petitioner was also willing to marry her and it is only on the objection of parents of P.W.1, their marriage could not be performed. Thereafter the petitioner attempted to marry another girl, at that time the victim girl questioned the same and forced the petitioner to marry her which the petitioner could not accept. He would submit that both during chief and cross examination P.W.1/victim girl confirms that there is no compulsion, false promise, inducement and forcible physical relationship has been committed. He further submitted that now the petitioner is married and settled with his wife and the victim girl is also married to another man and they are having their respective



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family.

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6.Learned Additional Public Prosecutor on the other hand submitted that in this case the petitioner employed the victim girl in his shop and she was employed there for more than six years, taking advantage of the dominant position, the petitioner induced and forced the victim girl for physical relationship and later refused to marry her. Thereafter the victim girl lodged a complaint and narrated the entire happenings. P.W.2 and P.W.3, who are the father and mother of the victim girl/P.W.1, corroborated the evidence of P.W.1. P.W.4 is the witness for observation mahazar, P.W.5 is the Professor who examined the accused, P.W.6 is the witness for arrest and confession, P.W.7 is the Doctor who examined the victim girl and P.W.9 is the Investigating Officer. He would submit that on the facts and circumstances of the case, the Trial Court had rightly convicted the petitioner.

7.Considering the submissions made and on perusal of the materials, it is seen that P.W.1 is a major and she admits that she was in employment with the petitioner for more than six years, at that time, they were in love



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relationship and they had physical relationship. In fact the petitioner went to the house of P.W.1 asking for marriage but P.W.2 and P.W.3 objected for the marriage since the petitioner belongs to Christianity. Even thereafter, they continued their relationship which was admitted by P.W.1. In view of the above that the petitioner never intended to marry, gave false promise and thereafter cheated the victim girl would not arise. The marriage between the victim girl and the petitioner could not be performed only due to the resistance shown by P.W.2 and P.W.3 which is admitted by P.W.1. Hence, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.

8. Accordingly, the Substantive Sentence of Imprisonment imposed on 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.5,000/- (Rupees Five Thousand only) with two sureties each for a like sum to the satisfaction of the Sessions Judge, Mahila Court [Fast Track Mahila Court], Villupuram.



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9.Further, the petitioner shall appear before the Trial Court once in three months 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.

10.Accordingly, this Miscellaneous Petition is ordered.

07.12.2023

cse

To

- 1.The Inspector of Police,
All Women Police Station,
Thirukoilur.
- 2.The Sessions Judge,
Mahila Court [Fast Track Mahila Court],
Villupuram.
- 3.The Superintendent,
District Prison, Villupuram.
- 4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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