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*Crl.M.P.No.15994 of 2023
in Crl.A.No.1080 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2023

CORAM:

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

Crl.M.P.No.15994 of 2023
in
Crl.A.No.1080 of 2023

Manikandan

... Petitioner

Vs.

State rep. by
The Inspector of Police,
All Women Police Station,
Ariyalur, Ariyalur District.
Crime No.23 of 2021

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Sections 389(1) and 439 of Cr.P.C to suspend the sentence and grant bail to the petitioner/appellant for the conviction and sentence imposed in Spl.S.C.No.35 of 2021 dated 28.03.2023 on the file of the Fast Track Mahila Court, Ariyalur pending disposal of the above appeal.

For Petitioner : Mr.K.Gandhi Kumar

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, Fast Track Mahila Court, Ariyalur by order dated 28.03.2023 made in Spl.S.C.No.35 of 2021 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused in Spl.S.C.No.35 of 2021 was convicted by the Trial Court and sentenced to undergo twenty years rigorous imprisonment for the offence under Section 6 of Protection of Children from Sexual Offences Act, 2012 [POCSO Act] and to pay a fine of Rs.50,000/-, in default to undergo two years simple imprisonment and to undergo ten years rigorous imprisonment for the offence under Section 366 IPC and to pay a fine of Rs.10,000/-, in default to undergo one year simple imprisonment.

3.The case of the prosecution is as follows:



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P.W.1/victim, whose date of birth is 23.05.2008 aged about 13½ years was studying 9th Standard. The petitioner/accused who used to visit his relative and neighbour to the victim, at that time, the petitioner/accused by sugar-coated words expressed his love to the victim girl and the victim in her tender age not knowing about the same also agreed for the same. On coming to know about the love relationship between the victim girl and the petitioner, the parents of the victim objected and restricted her. This being so, on 15.07.2021 when the parents of the victim had gone for their work, the petitioner/accused took the victim initially to Trichy, thereafter to Erode and made her to stay at his brother's house where he had committed penetrative sexual assault on her. Thereafter, on coming to know about registration of the case, the victim was sent back on 17.07.2021. The respondent police secured the victim and thereafter informed to her parents. Initially, a case for Kidnapping had been registered, later on securing the victim and submitting her to medical examination, case was altered including POCSO Act. Thereafter, the Investigating Officer conducted investigation, examined the witnesses, victim was subjected to medical examination and thereafter the victim was produced before the learned



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Magistrate for recording 164 statement. On collecting the medical reports and examination of Doctors, investigation completed and charge sheet filed against the petitioner/accused.

4.Before the Trial Court, on the side of the prosecution P.W.1 to P.W.12 were examined, Ex.P1 to Ex.P11 and Ex.C1 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 as stated above.

5.The contention of the learned counsel for the petitioner is that in this case P.W.1 is the victim, who had admitted about the love relationship between her and the petitioner. The victim had voluntarily left her house, accompanied the petitioner, went to the brother's house of the petitioner and stayed there for two days. Thereafter, on coming to know about registration of the case, the victim was produced by the petitioner before the respondent police. He would submit that the victim had stated that during the short stay of two days, they embraced each other and there was no penetrative sexual



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assault. He further submit that 164 statement recorded had been marked as Ex.C1 by the Trial Court on its own accord but the victim was categorical that she had love affair with the petitioner and she went voluntarily with the petitioner and nothing had happened to her. P.W.2 and P.W.3, who are the mother and father of the victim girl confirmed the relationship between the petitioner and the victim girl which was objected by them and thereafter, the victim was found missing from 15.07.2021 to 17.07.2021, for which complaint was lodged. Later the victim girl appeared before the respondent police, she was sent for medical examination and even before P.W.7/Doctor, the victim girl had not stated about penetrative sexual assault. On the other hand, P.W.7/Doctor, who issued Accident Register/Ex.P6 had stated that hymen was not found intact and there was no other injury on the victim. Further, the Doctor had given an opinion that the movement of hymen might be for various reason including the victim using cycle and also during playing. Thus, the consistent stand of P.W.1 to P.W.3 as well as medical evidence is that the victim was not subjected to any penetrative sexual assault.



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6.He would further submit that in this case, the other witnesses, namely, P.W.8 and P.W.9 were projected against the petitioner to show that the victim and the petitioner were seen together but they had not supported the case of the prosecution. He further submit that the victim herself had stated that she had voluntarily went along with the petitioner, they stayed for two days and came back. On the other hand, the Trial Court on its own referring Ex.C1/164 statement of the victim wherein it was recorded that the petitioner had misbehaved with her on two occasions coupled with the evidence of P.W.7/Doctor who had stated that hymen was not intact, had come to the conclusion that the petitioner had committed penetrative sexual assault on the victim, which is not proper. Further, the 164 statement had not been confronted with the victim and hence, it cannot be relied upon. He would further submit that the evidence of P.W.7/Doctor only supports the case of the petitioner and the Trial Court on its own notion had given a different finding. Hence, he prayed for grant of suspension of sentence.

6.The learned Additional Public Prosecutor submits that in this case on receipt of the complaint from the parents of the victim, case has been



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registered by the respondent police. P.W.10 initially registered a FIR/Ex.P8 in Crime No.23 of 2021 under Section 366 IPC. Thereafter, P.W.11 took up the investigation, recorded the statement of P.W.2 and P.W.3/mother and father of the victim/P.W.1, visited the scene of occurrence and prepared observation mahazar in the presence of P.W.4. He would submit that P.W.8 and P.W.9 in their 164 statement disclosed that the petitioner and the victim girl were found together at the relevant point of time. On 17.07.2021, P.W.1/victim girl appeared before the respondent police on her own, her statement was recorded and thereafter, she was sent for medical examination. P.W.7/Doctor examined the victim girl and issued Accident Register/Ex.P6. Thereafter, the petitioner/accused was arrested and sent for medical examination. P.W.6/Doctor examined the petitioner/accused and issued potency report. P.W.5/Headmaster of Government Higher Secondary School, Thalavai issued Ex.P4/School Certificate and confirmed that the date of birth of the victim girl is 23.05.2008. He further submitted that it is proved that the victim girl is a minor and it is also not disputed that the petitioner and the victim girl were together from 15.07.2021 to 17.07.2021. Further, the victim girl as well as her parents were silent with regard to the



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penetrative sexual assault and the evidence of P.W.7 confirmed that hymen was not intact. He further submitted that the petitioner is aged about 32 years and the victim is only around 14 years, taking advantage of the innocence of the victim and her tender age, the victim was exploited by the petitioner. Therefore, considering all these aspects the Trial Court had rightly convicted the petitioner. Hence, he prayed for dismissal of this petition.

7.Considering the submissions made and on perusal of the materials, it is seen that in this case P.W.1 is the victim, P.W.2 and P.W.3 are the parents of the victim. The case is that the petitioner who used to visit his relative and neighbour of the victim, developed love relationship with the victim which was opposed by P.W.2 and P.W.3. On 15.07.2021, when P.W.2 and P.W.3 had gone for their work, the victim accompanied the petitioner and both of them went to Trichy and thereafter to Erode and stayed for two days, i.e. 15.07.2021 to 17.07.2021. On coming to know about the registration of the case, the victim appeared before the respondent police on 17.07.2021. The victim was subjected to medical examination



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before P.W.7, who had stated that the victim was not subjected to penetrative sexual assault and the same is confirmed by Ex.P6 which was recorded on 17.07.2021. Further, in Ex.C1 which was recorded on 22.07.2021 it was recorded that the victim and the petitioner had physical relationship between them. But the earliest medical record and the medical evidence state otherwise. Further, the 164 statement had not been confronted with the victim. Hence, from the evidence of P.W.1 to P.W.3, P.W.7 and Ex.P6, it is seen that the finding of the Trial Court needs re-consideration. In view of the same, 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.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the Sessions Judge, Fast Track Mahila Court, Ariyalur.



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9.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.

10.Accordingly, this Miscellaneous Petition is ordered.

01.11.2023

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Note: Issue order copy on 02.11.2023



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To

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



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M. NIRMAL KUMAR, J.

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