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*Crl.M.P.No.16200 of 2023
in Crl.A.No.797 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2023

CORAM:

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

Crl.M.P.No.16200 of 2023
in
Crl.A.No.797 of 2023

Thirumal
S/o.Raman

... Petitioner/Accused

Vs.

The State rep. by
The Inspector of Police,
Samalpatti Police Station,
Krishnagiri District.
Crime No.325 of 2021.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence imposed against the petitioner in S.C.No.167/2022 on the file of the learned Sessions Judge, Mahila Court, Krishnagiri, Krishnagiri District dated 30.06.2023 and enlarge the petitioner on bail pending disposal of the said Crl.A.No.797 of 2023 on the file of this Court.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



*Crl.M.P.No.16200 of 2023
in Crl.A.No.797 of 2023*

WEB COPY

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner/accused, seeking suspension of sentence of imprisonment imposed by the learned Sessions Judge, Mahila Court, Krishnagiri, Krishnagiri District by judgment dated 30.06.2023 made in S.C.No.167 of 2022 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused in S.C.No.167 of 2022 was convicted by the Trial Court by judgment dated 30.06.2023 for offence under Section 306 of IPC and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo one year simple imprisonment. Against which, the petitioner has filed Crl.A.No.797 of 2023 along with the instant miscellaneous petition seeking suspension of sentence and bail.

3.During trial, on the side of prosecution PW1 to PW17 examined and marked Exs.P1 to P12. On the side of the defence, one witness DW1 examined and marked Exs.D1 to D6. On conclusion of the trial, the trial Court convicted the petitioner as stated above.



*Crl.M.P.No.16200 of 2023
in Crl.A.No.797 of 2023*

WEB COPY

4.The contention of the learned counsel for petitioner is that in this case the victim is said to have consumed rat poison on 06.12.2021 and she died on 12.12.2021. During this period, she took treatment at Uthangarai Primary Health Centre and thereafter at Government General Hospital, Dharmapuri and thereafter in a private nursing home of PW7. Till such time, the police was not informed about the victim consuming rat poison and the petitioner is abettor for the same. On the contrary, the petitioner was assaulted by one Dinesh/PW12, son of the victim and PW1, for which, the petitioner lodged a complaint to the respondent police. On the complaint of the petitioner, a case has been registered on 08.12.2021 in Crime No.318 of 2021. According to the petitioner, he was assaulted on 06.12.2021 and lodged a complaint. The Sub Inspector of Police attached to the respondent police with a delay registered the F.I.R. The petitioner took treatment in the Government Hospital, which was also confronted to PW12, who felt ignorance of the same. He further submitted that in this case PW6 is the Doctor, who initially examined the victim on 07.12.2021 at about 3.25 p.m. PW6 in her evidence stated that the victim was brought by his brother/PW5. PW7 is the Doctor of TCR Nursing Home, who stated that on 07.12.2021 at about 3.55 p.m. the victim was brought by her husband informing that on



*Crl.M.P.No.16200 of 2023
in Crl.A.No.797 of 2023*

WEB COPY

06.12.2021 at about 9.00 p.m., the victim consumed 6 teaspoons of rat poison and after vomiting, she complained of stomach ache, thereafter, she was taken to the hospital.

4.1. In this case, whether the consumption of rat poison is in the field or in the house of the victim is also doubtful. PW16/Sub Inspector of Police admits about the registration of the case on the complaint of the petitioner. Further, a case in Crime No.317 of 2021 registered, which is said to have been given by the victim on 06.12.2021 and the 161 statement of the victim, her husband Murugan/PW1 herein, one Rajinikanth, brother of victim/PW5 herein and one Sekar and Chinnadurai were shown to be recorded on 08.12.2021, which may not be correct. The petitioner's case is that from 07.12.2021 the victim was admitted in the hospital for consuming rat poison but it has been projected as though on 08.12.2021, 161 statement had been recorded by PW16. He further submitted that in this case, PW17/Investigating officer confirms about the registration of the case and investigation conducted by PW16. The trial Court relied upon the evidence of PW12, whose evidence is doubtful. The entire origination of the case and what had happened between 06.12.2021 and 13.12.2021 is mystery. These



*Crl.M.P.No.16200 of 2023
in Crl.A.No.797 of 2023*

factors have not been considered by the trial Court. Further, the petitioner has arguable points and fair chance of success in this appeal. Hence, he prays for granting suspension of sentence to the petitioner.

5.Learned Additional Public Prosecutor filed his counter and submitted that in this case on the complaint of PW1, husband of victim, a case has been registered. PW12 is the son of PW1 and the victim, who on hearing the cry of his mother rushed to the field and found that the petitioner attempting to sexual assault and thereafter he beaten up the petitioner and took the victim to their house. Thereafter the victim and PW1 gone to the police station, lodged a complaint and a case in Crime No.317 of 2021 registered by PW16. Now, investigation completed, charge sheet filed. This incident caused insult to the victim and the petitioner and victim had illegal relationship for around 15 years. The victim after some time had resisted the same. Despite the same, the petitioner forced the victim to continue relationship, which led to the assault on 06.12.2021. Since the relationship between the petitioner and the victim came to the knowledge of everybody, the victim consumed rat poison and later she died. The victim consuming rat poison on 06.12.2021 is proved by the evidence of PW1, PW6, PW7, PW12



*Crl.M.P.No.16200 of 2023
in Crl.A.No.797 of 2023*

and PW16, which created some confusion in registration of the case in Crime No.317 of 2021. This fact has not been confronted with the Investigating Officer/PW16 or PW17 and now the petitioner raising it as a point cannot be accepted. The Trial Court considering all these aspects rightly convicted the petitioner as stated above. Hence, prays for dismissal of the petition.

6.Considering the submissions made and on perusal of the material, it is seen that apart from this case, two cases have been registered, one is Crime No.317 of 2021 on the complaint of victim. The complaint is that when the victim was in the field, the petitioner said to have approached her, which was resisted by the victim. The victim raised alarm and thereafter PW12 came to rescue her, later complaint has been lodged. PW16 confirms the same, who also submitted that the statement of the victim, PW1, PW12 and others have been recorded on 08.12.2021. On the other hand, the evidence of PW6 and PW7 is that the victim was in the hospital from 07.12.2021. The petitioner's complaint in Crime No.318 of 2021 is also admitted. Both the complaints were marked as Exs.D1 and D2. Finding reason and force in the petitioner's submission, the judgment of the Trial Court needs reconsideration. Further taking note of the fact that there are arguable points involved in this appeal



*Crl.M.P.No.16200 of 2023
in Crl.A.No.797 of 2023*

and it would take some time for the appeal to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioner/accused.

7. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner/accused 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 learned Sessions Judge, Mahila Court, Krishnagiri, Krishnagiri District.

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.



WEB COPY



*Crl.M.P.No.16200 of 2023
in Crl.A.No.797 of 2023*

M. NIRMAL KUMAR, J.

rsi

9. Accordingly, this Criminal Miscellaneous Petition is ordered.

15.11.2023

rsi

Note: Issue order copy on 15.11.2023.

To

1. The Inspector of Police,
Samalpatti Police Station,
Krishnagiri District.
2. The Sessions Judge,
Mahila Court, Krishnagiri,
Krishnagiri District.
3. The Superintendent,
Central Prison,
Vellore.
4. The Public Prosecutor,
High Court, Madras.

**Crl.M.P.No.16200 of 2023
in Crl.A.No.797 of 2023**