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Crl.MP.No.15996 of 2023
in Crl.A.No.1082 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.15996 of 2023

in

Crl.A.No.1082 of 2023

Soundarapandi

... Petitioner/A1

Vs.

State Rep. by

The Inspector of Police,
All Women Police Station,
Palladam,
Tiruppur District.

... Respondent/Complainant

Prayer :- Criminal Miscellaneous Petition filed under Section 389 (1) of Cr.P.C. to suspend the sentence imposed by the learned Sessions Judge, Mahalir Neethimandram (FTMC), Tiruppur, dated 04.09.2023 in Spl.S.C.No.9 of 2020 and enlarge the petitioner on bail pending disposal of the above appeal.



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For Petitioner : Mr.G.Karuppasamy Pandian

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

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

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner/A1, by the learned Sessions Judge, Mahalir Neethimandram (FTMC), Tiruppur, in Spl.S.C.No.9 of 2020, by the judgment dated 04.09.2023, and enlarge him on bail pending disposal of the above Criminal Appeal.

2.The learned Sessions Judge, Mahalir Neethimandram (FTMC), Tiruppur, in Spl.S.C.No.9 of 2020, convicted and sentenced the petitioner/A1 to undergo twenty years rigorous imprisonment and to pay a fine of Rs.2,500/- in default to undergo six months rigorous imprisonment for the offence under Section 5(l) r/w 6 of the POCSO Act.



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3.Challenging the above conviction and sentence, the petitioner/A1, has filed the above Criminal Appeal and he seeks suspension of sentence and bail in the present miscellaneous petition.

4.Heard Mr.G.Karuppasamy Pandian, learned Counsel appearing for the petitioner and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, appearing for the respondent/State.

5. It is the case of the prosecution that the petitioner/A1 and the victim who was aged 17 years had a love affair; that he promised to marry the victim and had sexual intercourse with her on more than one occasion; that the victim girl became pregnant and pursuant to a DNA Test conducted during investigation, it was found that the petitioner was not the biological father and that A2 was the biological father, who had also committed penetrative sexual assault on the victim. Therefore, both the accused were charged and tried for the offence under Section 6 of the POCSO Act. Both the accused were convicted. The petitioner/A1 was sentenced as stated in paragraph No.2 above.



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6. (i) The learned counsel for the petitioner submitted that initially the victim had given a complaint stating that the petitioner was the cause for pregnancy and thereafter, when it was found during investigation that the biological father was A2, she had changed her version and stated that both petitioner/A1 and A2 had committed penetrative sexual assault and hence, the victim cannot be believed in respect of the role of the petitioner is concerned.

(ii) The learned counsel further submitted that the petitioner was falsely implicated only because there was a difference of opinion and he did not agree to marry the victim girl. The learned counsel read to us the evidence of the mother of the victim PW2, who had deposed even in the chief examination that A2 alone had committed the offence of penetrative sexual assault on the victim child. He further submitted that the accused is in custody since 04.09.2023 and prayed to suspend the sentence imposed on the petitioner.



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7. The learned Additional Public Prosecutor submitted that it is the fact that it was found during investigation that the biological father of the child of the victim was A2 and that would not falsify the victim's version as regards the involvement of the petitioner/A1 also for the offence under Section 6 of the POCSO Act, and hence, prayed for dismissal of the petition.

8. We have carefully considered the submissions made by the learned counsel for the petitioner/A1 and the learned Additional Public Prosecutor. We find that the complaint initially was only filed against the petitioner herein/A1 stating that he had committed penetrative sexual assaults with a promise that he would marry the victim. The victim had also given 164 statement on 19.11.2018 before the learned Magistrate, reiterating her version in the complaint. However, after the DNA reports were obtained which were marked as Ex.P17 and Ex.P18, the victim girl had come up with a different version that both A1 and A2 have committed penetrative sexual assault. She had also admitted that she told the Police after the DNA reports that A2 was responsible for her pregnancy.

9. We also find from the evidence of both PW1, PW2 and the



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Investigation Officer-PW13 that the victim had initially not mentioned the name of A2 since, he was her father's friend and that would cause embarrassment to both the victim and her parents. That apart, we find that PW2, the mother of the victim has categorically stated that she came to know later that A2 alone committed the offence of penetrative sexual assault and when she gave the complaint she was not aware of the truth. Her version no doubt is hearsay. However, we are of the view that since the victim has suppressed the involvement of A2 initially and considering the inconsistencies in her evidence, A1's involvement in the offence of penetrative sexual assault is highly doubtful.

10. Therefore, considering the above facts and 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 herein.

11. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment imposed on the petitioner/A1 is suspended on the following conditions:



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- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Sessions Judge, Mahalir Neethimandram (FTMC), Tiruppur;
- (ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity;
- (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.)
17.11.2023

Internet : Yes

Index : Yes / No

Note to office:

Issue order copy by 21.11.2023

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S.S. SUNDAR, J.
and
SUNDER MOHAN, J.

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To

- 1.The Sessions Judge,
Mahalir Neethimandram (FTMC),
Tiruppur.
- 2.The Inspector of Police,
All Women Police Station,
Palladam,
Tiruppur District.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.

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