



Crl.M.P.No.16335 of 2023 in Crl.A.No.1099 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.No.16335 of 2023
in Crl.A.No.1099 of 2023

Elaiyaraja

... Petitioner

Vs.

State, Represented by
The Inspector of Police,
All Women Police Station,
Jayamkondam,
Ariyalur District.
(Re. Crime No.17/2021).

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C., to suspend the sentence of 4 years rigorous imprisonment passed in S.C.No.48/2022 by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur, vide judgment dated 07.09.2023 till disposal of the main Criminal Appeal.

For Petitioner : Mr.R.Rajkumar
For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence of imprisonment passed in S.C.No.48 of 2022 by the learned



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Sessions Judge, Fast Track Mahila Court, Ariyalur (trial Court) whereby the petitioner was convicted and sentenced to undergo four years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months Simple Imprisonment for offence under Section 376(1) r/w 511 of IPC.

2.The case against the petitioner is that on 24.06.2021, at about 04.30 a.m., when the victim (PW1) went to the backward of her house to attend the natural call, the petitioner is said to have in semi nude condition, pulled her saree, tore her jacket, pushed her down, laid on her and attempted to commit rape. On hearing the cry, the victim's husband (PW2), brother-in-law and father-in-law (PW3) rushed to the scene. On seeing them, the petitioner ran away from the scene of occurrence. On the next day evening, PW2, PW3 and PW6 went to the petitioner's house and fight with him. Sensing the same in offensive, the petitioner lodged the complaint, FIR (Ex.D1) registered in Crime No.166 of 2021, for offence under Sections 294(b), 324, 323 and 506(i) of IPC against PW2, PW3 and PW6. As regards the complaint of the victim (Ex.P1), a case in Crime No.17 of 2021



(Ex.P7) registered for offence under Sections 376 r/w 511 of IPC. On conclusion of investigation, charge sheet filed before trial Court.

3.During trial, 11 witnesses examined as PW1 to PW11 and 8 documents marked as Exs.P1 to P8. On the side of the defence, the petitioner examined himself as DW1 and 2 documents marked as Exs.D1 & D2. The trial Court on conclusion of the trial, passed the judgment of conviction against the petitioner as stated above.

4.The learned counsel for the petitioner submitted that the petitioner has been falsely implicated in this case, PW2, the husband of the victim had some doubt with regard to the petitioner and the victim having relationship. PW2, PW3 and PW6 came to the house of the petitioner, questioned him, picked up quarrel and also assaulted him using knife and lathi all over his body in black and blue. When the petitioner's sister and mother came to rescue, they were also beaten. Due to such incident, the petitioner sustained injuries, with the aid of 108 Ambulance, he was taken to the Government Hospital, Jayankondam where he took treatment as inpatient. To prove this



fact, the petitioner examined himself as DW1 and marked two documents as Exs.D1 & D2, namely, FIR registered against PW2, PW3 and PW6 and the wound certificate. To overcome in defensive, a false case registered against the petitioner. In this case, the complaint (Ex.P1) itself registered after seven days delay, for which, no reason given. The petitioner sustained injuries and getting treatment as inpatient are proved by him. These facts not considered by the trial Court, on the other hand, gives an explanation that to escape from his offensive act, the petitioner projected the case in such manner. Hence, he prayed for suspension of sentence and bail.

5.The learned Additional Public Prosecutor appearing for the respondent Police submitted that the trial Court considered the assault on the petitioner made by PW2, PW3 and PW6. Even the registration of FIR (Ex.D1) against PW2, PW3 and PW6 recorded in the impugned judgment. The petitioner is residing in the opposite house of the victim. On the fateful day, the petitioner went to the house of the victim to the backyard at odd hours. Taking advantage of her loneliness, the petitioner attempted to commit rape. On hearing cry, PW2, PW3 and PW6 rushed to rescue, the



petitioner escaped from the scene. Since making complaint about this incident would cause embarrassment and unnecessary publicity, the victim and her family initially reluctant to lodge the complaint. Taking advantage of non-filing of complaint by the victim, the petitioner lodged the complaint against PW2, PW3 and PW6 as though he was assaulted and also getting himself admitted in the hospital. PW11, the Investigating Officer in her evidence admits about the incident and the petitioner admitted in the hospital.

6.He further submitted that now investigation in Crime No.166 of 2021 (Ex.D1) completed, charge sheet filed before the learned Judicial Magistrate, Sendhurai, taken on file as C.C.No.11 of 2022 against PW2, PW3 and PW6. The second incident is the creation of the petitioner's attitude, for this reason, the case against the petitioner cannot be thrown away. In this case, PW1 is the victim and PW2, PW3 and PW6 are the witnesses who came to the scene of occurrence immediately, on seeing them, the petitioner escaped from the scene of occurrence. All the witnesses are corroborated with each other. The trial Court on the evidence and



materials produced rightly convicted the petitioner. Hence, he opposed this petition.

7.Considering the submissions and on perusal of the materials, it is seen that the petitioner's complaint is at the early stage. The petitioner was attacked black and blue as could be seen from the wound certificate (Ex.D2). The petitioner was attacked on his private parts, which is also recorded in Ex.D2. It is also seen that on the complaint of the petitioner, now investigation completed and charge sheet filed against PW2, PW3 and PW6, who are the witnesses in the present case. In view of the above, this Court finds that the conviction of the petitioner needs consideration.

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 trial Court.



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9.The petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m., till 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 Criminal Miscellaneous Petition is ordered.

07.11.2023

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To

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



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M. NIRMAL KUMAR., J.

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