



*Crl.M.P.No.16842 of 2023
in Crl.A.No.1152 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM:

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

Crl.M.P.No.16842 of 2023
in
Crl.A.No.1152 of 2023

Santhosh Kumar
S/o.Easwaran

... Petitioner/Accused

Vs.

The State rep. by
The Inspector of Police,
Kudimangalam Police Station,
Tiruppur District.
Crime No.1581 of 2020.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence imposed in Spl.S.C.No.23 of 2021 on the file of Mahila Court (Fast Track Mahila Court), Tiruppur dated 16.05.2023 pending disposal of C.A.No.1152 of 2023.

For Petitioner : Mr.M.Rajkumar

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



*Crl.M.P.No.16842 of 2023
in Crl.A.No.1152 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 (Fast Track Mahila Court), Tiruppur by judgment dated 16.05.2023 made in Spl.S.C.No.23 of 2021 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/Accused in Spl.S.C.No.23 of 2021 was convicted by the trial Court by judgment dated 16.05.2023 for offences under Sections 5(l) r/w 6 of POCSO Act and 366A of IPC and sentenced to undergo twenty years rigorous imprisonment and to pay a fine of Rs.5,000/- for offence under Section 5(l) r/w 6 of POCSO Act and seven years rigorous imprisonment and to pay a fine of Rs.2,500/- for offence under Section 366A of IPC. Against which, the petitioner has filed Crl.A.No.1152 of 2023 along with the instant miscellaneous petition seeking suspension of sentence and bail.

3.The case of the prosecution is that on 15.12.2020, when the victim girl was standing near Panathampatti Bus stop at about 6.00 p.m., the



*Crl.M.P.No.16842 of 2023
in Crl.A.No.1152 of 2023*

petitioner came and informed that he is in love with her and also promised to marry her and keep her in good humour. Further he enticed her to accommodate him so that they can go various places and be happy. By saying so, the victim girl was forced to get into his bike and thereafter, he had taken her to Gonvindapuram, Pollachi where the relative of petitioner was staying and made the victim to stay there and during the stay, the petitioner forcibly committed penetrative sexual assault, despite the victim's refusal. This had happened for more than one occasion. Hence, the prosecution on the complaint of victim's parents registered a case under Section 366A of IPC and 5(1) r/w 6 of POCSO Act.

4.During trial, on the side of prosecution PW1 to PW9 examined and marked Exs.P1 to 15 and marked material object M.O.1. On the side of the accused no witnesses examined and no documents marked. On conclusion of the trial, the trial Court convicted the petitioner as stated above.

5.The contention of the learned counsel for petitioner is that the petitioner and the victim girl were in love with each other. The parents of the victim girl resisted the same and also harassed the victim girl. Thereafter, the



*Crl.M.P.No.16842 of 2023
in Crl.A.No.1152 of 2023*

victim girl forced the petitioner to accompany her to escape from her parents torture. Fearing for her safety, the petitioner accompanied the victim girl, which is now projected as though the petitioner kidnapped the victim girl with sexual intent, thereafter taking her to various places and had penetrative sexual assault. He further submits that victim's 164 statement marked as Ex.P1, in which, the victim admitted that on 15.12.2020 at about 11.00 a.m. one Murugammal, who is the neighbour of victim, informed victim's mother and brother that the petitioner and the victim girl were in love with each other and in the morning hours, the petitioner visited the victim in her house and stayed there for more than an hour. Thereafter, the victim's mother and brother abused and threatened the victim. Further in her statement she stated that she only called the petitioner and both of them stayed in petitioner's sister's house for two days and at that time they lived as husband and wife. She does not state about any forcible penetrative sexual assault committed on her.

5.1.PW7/Government Doctor, Udumalai examined the victim girl and given a medical report/Ex.P7 and P8, in which, he had recorded that there is nothing to come to a conclusion that the victim girl's hymen is intact or not. Further, he had given evidence that there is no possibility of any recent



*Crl.M.P.No.16842 of 2023
in Crl.A.No.1152 of 2023*

WEB COPY

sexual act committed on the victim. The vaginal swab and smear also proved negative. He further submitted that one Selva Fathima, Head Mistress of the victim girl's school has not been examined. In this case, school certificate/Ex.P13 marked through PW9/Investigating Officer. In view of the same, the victim girl's age cannot be proved to be minor. He further submitted that the victim's parents are uneducated rustic villagers, it is the school authorities on their own record the age of the student. The non examination of the Head Mistress is fatal to the case of the prosecution. He further referring to the evidence of PW1/victim girl, submits that there is no forcible abduction or kidnapping by the petitioner and it is the petitioner, who accompanied the victim girl, PW2/father of the victim, not stated anything other than lodging the complaint. PW3 and PW4 are mahazar witnesses, other witnesses are official witnesses. He further submits that the petitioner is young person, who is hardly 22 years old, a B.Com graduate and now he and his parents are willing for a marriage with the victim girl as and when she attains majority. It is only the parents of the victim, who has got some objections due to the social background. 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.



*Crl.M.P.No.16842 of 2023
in Crl.A.No.1152 of 2023*

WEB COPY

6.Learned Additional Public Prosecutor filed his counter and submitted that on the complaint of PW2/father of victim girl, a case has been registered. The victim girl and the petitioner were secured from the house of the petitioner's sister near Pollachi and they were together for two days. During the stay, the petitioner committed penetrative sexual assault. The victim being a minor had been enticed, victim not knowing the seriousness and consequences had given herself to the petitioner's force. Now the petitioner attempts to absolve himself, justifying that it is a love affair between him and the victim girl. The victim's parents opposed to the same. The victim girl in her statement before the police as well as the learned Magistrate, clearly stated that she had been with the petitioner for two days and at that time penetrative sexual assault committed. PW7/Doctor evidence is also in confirmity to the case of the prosecution. The Trial Court considering all these aspects rightly convicted the petitioner as stated above. Hence, prays for dismissal of the petition.

7.Considering the submissions made and on perusal of the material, it is seen that the petitioner is aged about 22 years and B.Com graduate, a first



*Crl.M.P.No.16842 of 2023
in Crl.A.No.1152 of 2023*

graduate from his family. The petitioner and the victim girl were in love with each other. The victim girl in her 164 Cr.P.C. statement/Ex.P1 confirms her relationship and the objections by her mother and brother. The victim and the petitioner appears to be from different social background which might be the reason for objection. The victim's mother and brother harassed and abused the victim, which was informed to the petitioner, repulsiveness at the adolescent age is common, due to which both petitioner and victim, not knowing the seriousness and consequences, eloped, stayed for two days with closeness, which now led the petitioner to the gallows. PW7/Doctor evidence and the victim evidence are in favour of the petitioner. In view of the same, the judgment of the Trial Court needs reconsideration. Further taking note of the fact that there are arguable points involved in this appeal 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.

8. 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



*Crl.M.P.No.16842 of 2023
in Crl.A.No.1152 of 2023*

sureties each for a like sum to the satisfaction of the learned Sessions Judge,
Mahila Court (Fast Track Mahila Court), Tiruppur.

9.Accordingly, this Criminal Miscellaneous Petition is ordered.

09.11.2023

rsi

Note: Issue order copy on 10.11.2023.

To

- 1.The Inspector of Police,
Kudimangalam Police Station,
Tiruppur District.
- 2.The Sessions Judge,
Mahila Court (Fast Track Mahila Court),
Tiruppur.
- 3.The Superintendent,
Central Prison,
Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.



WEB COPY



*Crl.M.P.No.16842 of 2023
in Crl.A.No.1152 of 2023*

M. NIRMAL KUMAR, J.

rsi

**Crl.M.P.No.16842 of 2023
in Crl.A.No.1152 of 2023**

09.11.2023