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Crl.M.P.No.16567 of 2023 &
Crl.A.No.953 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2023

CORAM:

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

Crl.M.P.No.16567 of 2023 &
Crl.A.No.953 of 2023

Prabu

... Petitioner

Vs.

The State Rep. by The Inspector of Police,
All Women Police Station,
Krishnagiri,
Krishnagiri District.
(Crime No.15/2021)

... Respondent

PRAYER: Criminal Revision filed under Section 389(1) of Cr.P.C. to suspend the sentence imposed against the petitioner in Spl.S.C.No.42/2021 on the file of the learned Sessions Judge, Fast Track Mahalir Neethimandram, Krishnagiri, Krishnagiri District dated 31.07.2023 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

The petitioner/accused in Spl.S.C.No.42/2021 who was convicted by the trial court for the offence under section 366 IPC and sentenced to undergo five years R.I. and to pay a fine of Rs.1,000/- in default to undergo six months S.I. and for the offence under section 5(1) r/w 6(1) of Protection of Children from Sexual Offence (Amendment) Act, 2019 and sentenced to undergo 20 years R.I. and to pay a fine of Rs.4,000/-, in default to undergo one year S.I., filed this appeal and suspension of sentence.

2. The case of the prosecution is that the petitioner was working along with victim's father viz., PW3 as mason. He used to visit the victim girl's house often. Taking advantage of this introduction, he enticed and also proposed his love to the victim girl, who was a minor studying eighth standard at that time. Thereafter, on 16.09.2021, the victim left the house and did not return. After search, it was found that the victim and the petitioner had gone to the relative's house of the petitioner at Tiruppur and stayed for three days. PW1, the mother of the victim lodged a complaint for



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missing daughter. Thereafter, the victim and the petitioner were secured and both were produced before the Doctor PW10. PW10 after examining the victim had observed and recorded that the victim's hymen was found not intact. PW9, the Doctor gave his opinion that there is no evidence to show that the petitioner is impotent. Thereafter, the victim gave 164 statement Ex.P1 before the Magistrate. After completion of investigation, charge sheet filed. During trial PW1 to PW17 examined, Ex.P1 to Ex.P20 marked on the side of the prosecution. On the side of the defence, neither any witness examined nor marked any document. On conclusion of the trial, the trial court convicted the petitioner as stated above.

3. The contention of the petitioner is that the petitioner and the victim girl are in love with each other which was opposed by the parents of the victim. The parents of the victim also proposed to marry the victim girl against her wish with an elderly person. The victim girl had forced the petitioner to accompany him, otherwise, she would end her life. Having no other alternative, the petitioner was forced to accompany her, took her to his aunt's place at Tiruppur where they stayed for three days. After coming to



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know that a case had been registered, they came back to the native. The victim and the petitioner willing to marry each other with the concurrence of the parents, which is not in dispute. The age of the victim is also not proven. PW11, the School Headmaster stated that Ex.P14 is the school record, but there is no birth certificate or any previous school certificate to confirm the date registered in the school registers to be correct. The contention of the petitioner is that PW1 and PW3 who are the parents of the victim are uneducated and initially, they were employed in Bangalore and the victim was studying there and that, they gave the age of the victim approximately and the school authorities on their own recorded the age of the victim. The victim is a major, according to the petitioner and the father of the petitioner. He further submitted that it is a love affair and a consensual relationship which is now given criminal colour as though the petitioner had committed forcible penetrative sexual offence. He further submitted that the petitioner and the victim girl belonged to same social background and there is no opposition from the family members for their marriage. PW1, PW3 and the father of the petitioner have sworn an affidavit that once the victim girl attains marriageable age, marriage between petitioner and his daughter will



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be performed. The petitioner's father has no objection.

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4. Learned Additional Public Prosecutor on the other hand, opposed the same by stating that the victim, who is a minor girl, was kidnapped by the petitioner, taken to various places and petitioner committed penetrative sexual assault. This is proved by the evidence of PW10, the Doctor. The evidence of PW2 is well corroborated and the medical evidence also confirms the same. PW10, the Doctor confirms that the victim's hymen was found not intact. The petitioner is unable to give any reason for the same. The petitioner is aged 31 years. Taking advantage of the relationship with the father of the victim, he had committed the offence. The victim is still a minor and though the parents of the victim and the petitioner have no objection for marriage, in view of her age it cannot be performed and no credence to be given to the same.

5. This Court considered the submissions made on either side and perused of the materials available. It is seen that both the petitioner and the victim girl are from the same social background. The victim PW2, the



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parents of the victim PW1 and PW3 and the father of the petitioner are present before this Court all confirm the affidavit filed and also agree to have a marriage between the petitioner and the victim girl, once the victim attains the age of majority. They also admit there is some difference in their age, it is common in their village and community and it is acceptable. Further, the victim girl is firm and determined to marry the petitioner. In view of the non-production of the birth certificate and the evidence of PW11 that there is no other certificate, except the records made in Ex.P14, the victim's age is doubtful.

6. In view of the above, this court is inclined to grant suspension of sentence to the petitioner.

7. 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 learned Sessions



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Judge, Fast Tract Mahalir Neethimandram, Krishnagiri.

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8. Further, the petitioners 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 they are not able to appear before the Trial Court on that day, they 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.

9. Accordingly, this Miscellaneous Petition is ordered.

23.11.2023

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To

- 1.The Inspector of Police,
All Women Police Station,
Krishnagiri,
Krishnagiri District.
- 2.The Sessions Judge,
Fast Track Mahalir Neethimandram,
Krishnagiri, Krishnagiri District
- 3.The Central Prison, Vellore.
- 4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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