



Crl.M.P.No.17002 of 2023 in
Crl.A.No.1020 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.17002 of 2023 in
Crl.A.No.1020 of 2023

Sharuk Basha

... Petitioner

Vs.

1.State Rep. by the Deputy Superintendent of Police,
Uthangarai Sub Division,
Uthangarai Police Station,
Krishnagiri District.

2.The Inspector of Police,
Uthangarai Police Station,
Krishnagiri District.
(Crime No.517 of 2017)

3.Magalingam

... Respondents

PRAYER: Criminal Miscellaneous Petition filed under section 389(1) of Cr.P.C. to suspend the sentence imposed against the petitioner in Spl.S.C.No.50 of 2018 on the file of the learned Sessions Judge, Fast Track Magalir Neethimandram, Krishnagiri, Krishnagiri District dated 15.03.2023



Crl.M.P.No.17002 of 2023 in
Crl.A.No.1020 of 2023

and enlarge the petitioner on bail.

For Petitioner : Mr.E.Kannadasan

For Respondents : Mr.A.Damodaran
1 & 2 Additional Public Prosecutor

For Respondent 3 : Mr.T.Panchatsaram

ORDER

This petition has been filed to suspend the sentence imposed against the petitioner in Spl.S.C.No.50 of 2018 on the file of the learned Sessions Judge, Fast Track Magalir Neethimandram, Krishnagiri, Krishnagiri District dated 15.03.2023.

2. The petitioner/accused in Spl.S.C.No.50 of 2018 was convicted by the trial court by judgment dated 15.03.2023 and sentenced to undergo four years R.I. and to pay a fine of Rs.1,000/-, in default to undergo three



Crl.M.P.No.17002 of 2023 in
Crl.A.No.1020 of 2023

WEB COPY

months S.I. for the offence under section 366 IPC; to undergo ten years R.I., and to pay a fine of Rs.5,000/-, in default to undergo one year S.I. for the offence under section 5(1) r/w 6 of POCSO Act; to undergo ten years R.I. and to pay a fine of Rs.4,000/-, in default to undergo one year S.I. for the offence under section 3(2)(v) of SC/ST Act, against which the present appeal and suspension of sentence.

3. The contention of the petitioner is that the petitioner and the victim girl had love relationship with each other, which is not denied by the victim PW2. The victim admits that she was talking with the petitioner using mobile phone which was later found by her parents and objected the same. For this reason, the victim voluntarily gone out with the petitioner/accused and stayed there for three days. On the complaint of the victim's father, the petitioner has been projected that he had committed a penetrative sexual offence on the victim. The doctor PW12 in his evidence states that the age of



Crl.M.P.No.17002 of 2023 in
Crl.A.No.1020 of 2023

the victim should be between 18 and 19 years. In such circumstances, the complaint under POCSO Act would not attract and it became a consensual relationship. The petitioner is the first generation graduate from the family and due to adolescence and of love affair, the petitioner involved in the consented relationship, which cannot be termed as penetrative sexual offence and the petitioner had been convicted. He further submitted that at the finding that PW12 Doctor had given the victim's age as between 18 and 19 years, the School Headmistress has been examined as PW27 and Ex.P35 is the school certificate which has been marked through the Investigating Officer. Hence, the age of the victim is doubtful.

4. Learned Additional Public Prosecutor on the other hand submitted that the father of the victim has lodged a complaint and based on the said complaint, the respondent police registered the case and thereafter, they were making search for the victim girl. Finally the victim girl was



Crl.M.P.No.17002 of 2023 in
Crl.A.No.1020 of 2023

located with the petitioner at Chidambaram in the friend's house of the petitioner. The victim girl in her 164 statement as well as in the evidence before the court had clearly stated about the penetrative sexual offence committed on her on many occasions during the stay. Further, PW2/the victim girl had submitted that the petitioner had projected himself as Hindu named Tamizh. Later she came to know that he deceived the victim only to have physical relationship with her and thereafter, the petitioner was found to be a Muslim named Sharuk Basha. The victim was sent for a medical examination. PW19, the doctor who had examined the victim girl found that the victim girl was subjected to penetrative sexual assault and issued Ex.P12/Accident Register and Ex.P13/Medical report confirming the same. Learned Additional Public Prosecutor referring to paragraph 46 of the lower court judgment submitted that the lower court had given a finding that the victim is a minor and her age is confirmed by Ex.P35. The trial court on the evidence of PW1 to PW27, Ex.P1 to Ex.P36 and M.O.1 to M.O.6 had rightly convicted



Crl.M.P.No.17002 of 2023 in
Crl.A.No.1020 of 2023

the petitioner as stated above and the judgment is a reasoned one. Hence,
strongly opposed this petition.

5. Learned counsel for the third respondent/defacto complainant submitted that the victim girl was cheated by the petitioner projecting himself as a Hindu named Tamizh and had a relationship with her for five months. Taking advantage of the victim's position, he also gave a mobile phone through which they were in regular touch. Later on 13.11.2017, he had taken the victim girl to his friend's place and to various places and stayed there. At that time, he had committed penetrative sexual offence on the victim, who is a minor, which is evident from Ex.P35/School certificate, which confirms the age of the victim. The victim girl in her 164 statement as well as in the evidence before the trial court, clearly narrated the incident how she was subjected to penetrative sexual offence by the petitioner. The petitioner deceived the victim by projecting him as a Hindu named Tamizh. The trial



Crl.M.P.No.17002 of 2023 in
Crl.A.No.1020 of 2023

court on the evidence of the victim and the medical evidence had rightly convicted the petitioner.

6. Considering the submissions made on either side and perusal of the materials, the trial court in paragraph 46 of the judgement had rightly found that the victim is a minor and she had been subjected to a penetrative sexual offence, which is confirmed by the evidence of the victim as well as her 164 statement. The Doctor/PW19 also confirmed that the victim had been subjected to the penetrative sexual offence. The lower court considering all these aspects, convicted the petitioner and the judgment is a reasoned one.

7. In view of the above, this Court is not inclined to entertain this petition. Accordingly, this petition is dismissed.

12.12.2023

nl



Crl.M.P.No.17002 of 2023 in
Crl.A.No.1020 of 2023

Index : Yes/No
Speaking order/Non-speaking order



WEB COPY



Crl.M.P.No.17002 of 2023 in
Crl.A.No.1020 of 2023

To

- 1.The Deputy Superintendent of Police,
Uthangarai Sub Division,
Uthangarai Police Station,
Krishnagiri District.
- 2.The Inspector of Police,
Uthangarai Police Station,
Krishnagiri District.
- 3.The Sessions Judge, Fast Track Magalir Neethimandram, Krishnagiri,
Krishnagiri District
- 4.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.M.P.No.17002 of 2023 in
Crl.A.No.1020 of 2023

M.NIRMAL KUMAR,J.

nl

Crl.M.P.No.17002 of 2023



WEB COPY



Crl.M.P.No.17002 of 2023 in
Crl.A.No.1020 of 2023

12.12.2023