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Crl.M.P.No.16965 of 2023 in Crl.A.No.790 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2023

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.No.16965 of 2023
in Crl.A.No.790 of 2023

Selvakumar

... Petitioner

Vs.

The State Rep.by,
The Inspector of Police,
AWPS, Kancheepuram.
(Crime No.7/2018).

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C., to suspend the sentences passed in the Judgment dated 23.06.2023 in Special S.C.No.170 of 2019 on the file of Sessions Judge, Special Court, Exclusive Trial of Cases under POCSO Act, Chengalpatu and enlarge him on bail pending disposal of the above C.A.No.790 of 20213 on the file of this Court.

For Petitioner : Mr.M.G.Udayashankar
For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed in the judgment, dated 23.06.2023 in Special S.C.No.170 of 2019 by the learned Sessions Judge, Special Court for Exclusive Trial of



Cases under POCSO Act, Chengalpet (trial Court) and enlarge him on bail pending disposal of the main appeal.

2.The petitioner was convicted by the trial Court for offence under Section 366 of IPC and sentenced to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months Simple Imprisonment and for offence under Sections 6 r/w 5(l) of the Protection of Children from Sexual Offence Act, 2012, the petitioner sentenced to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.10,000/- in default to undergo one year Rigorous Imprisonment. Challenging the conviction and sentence of the trial Court, the petitioner preferred an appeal and the Suspension of Sentence.

3.The case of the prosecution is that on 28.11.2018, the defacto complainant/victim/PW1 lodged a complaint before the respondent Police stating that she is residing at Kancheepuram along with her mother/PW2. The victim girl used to frequently visit her elder sister Durga's house which is situated at Chinna Kancheepuram. The petitioner herein is residing opposite to the house of the said Durga's house and he developed love affair. For the past two years, they were moving closely. Since the



petitioner promised her to marry, she gave herself to the petitioner and had sexual intercourse on 23.12.2017 in a river bed. Due to which, the victim girl became pregnant which was informed to the petitioner, who refuted the same and said he is not the reason for her pregnancy and switched off his mobile. On 21.08.2018, the victim girl gave birth to a male child and three months thereafter, she lodged the complaint to the respondent Police. The respondent Police registered the case in Crime No.7 of 2018 for offence under Sections 366 and 363 of IPC and Sections 6 r/w 5(l) of the Protection of Children from Sexual Offence Act, 2012 on 28.11.2018.

4.On registration of the case, the respondent Police visited the Scene of Occurrence, prepared Observation Mahazar (Ex.P11) and Rough Sketch (Ex.P12) in presence of witnesses, arrested the accused on 28.11.2018 and thereafter, on collection of materials and recording the statement of the witnesses and Doctors, charge sheet filed before the trial Court on 18.02.2018. Initially, the charge sheet filed before the Mahila Court, Chengalpet and assigned Special S.C.No.26 of 2019 and later, it was transferred to the trial Court and renumbered as Special S.C.No.170 of 2019.



5. During trial, 13 witnesses examined as PW1 to PW13 and 14 documents marked as Exs.P1 to P14. On the side of the defence, no witness examined and no document marked. The trial Court on conclusion of the trial, passed the judgment of conviction against the petitioner as stated above.

6. The learned counsel appearing for the petitioner submitted that in this case, the victim girl/PW1 falsely implicated the petitioner in this case for obvious reason. In her evidence, she admitted that she was living alone with her mother/PW2 and her two sisters had love marriage and living separately and one of the sister eloped and thereafter, had a marriage. The victim girl stated that penetrative sexual assault taken place on 23.12.2017 and she delivered a male baby on 21.08.2018, after the birth of the child, she along with her mother/PW2 and others went to the petitioner's house asking for marriage which the petitioner and her family opposed and rejected and after three months, she lodged the complaint (Ex.P1). This story appears to be highly artificial. The victim girl in her evidence clearly admitted that she studied upto 10th std and she has general knowledge. She also admitted that she was subjected to medical examination for DNA proliferation and the



DNA report shows that the petitioner is not the biological father. This fact is further buttressed by the evidence of PW8, the Women Police Constable, who obtained the FTA card from the Forensic Department, collected the blood samples of the victim girl, new born baby as well as petitioner and thereafter, produced the same for forensic examination.

7.PW10, the Doctor attached to the Government Hospital, Kancheepuram in the maternity ward stated that on 01.12.2018, the victim girl brought to the hospital, she examined her, at that time, she informed that she had delivery at her home three months prior. PW10 recording the same, issued Accident Register (Ex.P8). PW13 is the Investigating Officer, who confirmed that on 24.01.2019 she examined one Sathish and through whom collected the medical report/potency certificate of the petitioner (Ex.P9). The DNA proliferation given by the Forensic Department marked as Ex.P13 and DNA report confirm that the petitioner is not the biological father of the child born to the victim girl.

8.The learned counsel further submitted that PW12, the Sub Inspector



of Police after obtaining the DNA report finding that the petitioner is not the biological father, filed petition under Section 173(8) of Cr.P.C., for further investigation to find out the reason for PW1's pregnancy, but the same not entertained by the trial Court. The trial Court proceeded on the evidence of PW1 that the petitioner enticed her, had physical relationship on the promise of marrying her, is sufficient to convict the petitioner. Thus, the finding of the trial Court, despite DNA report in favour of the petitioner will not affect the case of the prosecution and proceeded to convict the petitioner, is not proper. Hence, prayed for Suspension of Sentence.

9.*Per contra*, the learned Additional Public Prosecutor appearing for the respondent Police submitted that PW1 is the victim girl in this case, who lodged the complaint (Ex.P1) to the respondent Police. The respondent Police on registration of the FIR (Ex.P10) visited the Scene of Occurrence, collected the materials, recorded the statements of witnesses and thereafter, produced the victim girl for medical examination, arrested the petitioner and produced him for medical examination. The Doctor PW11 confirmed the potency of the petitioner and issued the potency certificate (Ex.P9). PW10



the Doctor who examined the victim girl confirmed the delivery of the baby is three months prior to her examination. PW9 issued birth certificate of the victim girl. The evidence of the victim girl (PW1) and her mother (PW2) are corroborated each other and other witnesses PW3 and PW4 not supported the case of the prosecution. In this case, the victim girl's evidence is categorical and clear that the petitioner enticed her and had physical relationship with the victim girl. The trial Court considering this to be sufficient, convicted the petitioner. The DNA test and the dismissal of the petition under Section 173(8) of Cr.P.C., would not affect the case of the prosecution. Hence, the reason given by the trial Court is a detailed and opposed the Suspension of Sentence.

10.Considering the submissions and on perusal of the materials, it is seen that though the victim girl stated that the petitioner is the reason for her pregnancy, PW10, the Doctor who examined the victim girl confirmed that the victim girl gave birth to a male child on 21.08.2018 i.e., three months prior to the occurrence. PW8, the Women Police Constable collected the FTA card from the Forensic Department and the Doctor collected the blood



samples of the petitioner, victim girl and the baby and submitted for forensic examination DNA proliferation. PW13, the Investigating Officer admitted that Ex.P13 DNA report confirmed that the petitioner is not the biological father.

11.It is also seen that PW12, the Sub Inspector of Police filed a petition under Section 173(8) Cr.P.C., for further investigation after receipt of DNA report to find out the reason for the victim girl's pregnancy and thereafter, no action taken. The case projected is that the petitioner is the reason for the victim girl's pregnancy which now found to be untrue as could be seen from Ex.P13 DNA report. When the foundation itself became shaky, thereafter for other reasons convicting the petitioner that too for offence under the Protection of Children from Sexual Offence Act, 2012, is not proper and sustainable.

12.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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13.Further, the petitioner 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 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. Accordingly, this Miscellaneous Petition is ordered.

20.10.2023

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To

- 1.The Sessions Court,
Special Court, Exclusive Trial of Cases under POCSO Act,
Chengalpet.
- 2.The Inspector of Police,
AWPS, Kancheepuram.
- 3.The Superintendent,
Central Prison, Puzhal.
- 4.The Public Prosecutor,
High Court, Madras.



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