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*Crl.M.P.No.16536 of 2023
in Crl.A.No.1126 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2023

CORAM:

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

Crl.M.P.No.16536 of 2023
in
Crl.A.No.1126 of 2023

Subramani

... Petitioner

Vs.

State rep. by
Inspector of Police,
Vennandur Police Station,
Namakkal District.
Crime No.722 of 2020

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the conviction and sentences imposed on the petitioner made in Spl.C.C.No.49 of 2020 dated 28.08.2023 on the file of the Sessions Judge, Fast Track Mahila Court, Namakkal and to release the petitioner on bail.

For Petitioner : Mr.C.Prabakaran

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER



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This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Sessions Judge, Fast Track Mahila Court, Namakkal by order dated 28.08.2023 made in Spl.C.C.No.49 of 2020 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused in Spl.C.C.No.49 of 2020 was convicted by the Trial Court and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.500/-, in default to undergo three months rigorous imprisonment for the offence under Section 7 r/w. 8 of POCSO Act, 2012, to undergo three months rigorous imprisonment for the offence under Section 294(b) IPC and to undergo three years rigorous imprisonment and to pay a fine of Rs.500/-, in default to undergo three months rigorous imprisonment for the offence under Section 506(ii) IPC. All the sentences to run concurrently.

3.The case of the prosecution is that on 06.08.2020 at about 4.30



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p.m., the victim girl/P.W.1 is collecting water from the public tap while her mother/P.W.2 fetching the water to their house. At that time, the petitioner who was in a drunken mood with sexual intent embraced the victim girl and laid his hands on her body. When the victim girl cried for help, P.W.2 came out from the house, saw the incident and immediately made a phone call to Vennandur Police Station and on the next day, she went to the Police Station and lodged a complaint. P.W.3/maternal grandmother of the victim girl also witnessed the incident. P.W.9 on receipt of the complaint from P.W.1 on 11.08.2020 visited the scene of occurrence, prepared observation mahazar and rough sketch, examined the witnesses present in the scene of occurrence and arrested the accused on 11.08.2020. The petitioner/accused gave voluntary confession statement, the victim girl was produced before the concerned Magistrate and her statement under Section 164 Cr.P.C. was recorded. Thereafter, on completion of investigation charge sheet was filed. On the side of the prosecution, P.W.1 to P.W.10 were examined, Ex.P1 to Ex.P9 were marked and on the side of the defence, no witness examined and no documents marked. The Trial Court on the evidence and materials produced convicted the petitioner as stated above.



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4.The contention of the learned counsel for the petitioner is that the occurrence had taken place near the public tap when P.W.1 and P.W.2 were fetching water, at that time the petitioner/accused is said to have been in a drunken mood, embraced the victim girl and also physically assaulted her with sexual intent. He would submit that in 164 statement/Ex.P1, the victim girl states that there were local residents when she fetched the water but in her 161 statement as well as in her evidence before the Trial Court, she gives a contradictory version as though she was alone near the public tap and her mother went inside the house to fill the water collected, taking advantage of her loneliness the accused is said to have embraced her. He would submit that the occurrence took place on 06.08.2020 but the complaint was lodged only on 11.08.2020 with a delay but no reason has been given. Though P.W.2 attempted to give an explanation as though complaint was lodged on 07.08.2020 P.W.9 who registered the FIR had categorically stated that complaint was lodged on 11.08.2020. The admitted case is that the petitioner and P.W.1 to P.W.3 are neighbours, there was a dispute between the petitioner's wife and P.W.2 with regard to fetching of water which had



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been exaggerated and false case has been foisted against the petitioner. He would further submit that the victim girl being a minor had been tutored by her mother/P.W.2 and grandmother/P.W.3 and she has deposed as per her mother's wish. He would submit that the Trial Court had earlier suspended the sentence imposed on the petitioner and immediately appeal has been filed along with a petition for suspension of sentence.

5.The learned Additional Public Prosecutor submits that on the complaint given by P.W.2/mother of the victim girl, P.W.9 registered the FIR. P.W.10 took up the investigation, visited the scene of occurrence, prepared observation mahazar and rough sketch in the presence of the witnesses P.W.4 and P.W.5. P.W.1 is the victim girl, P.W.2 and P.W.3 are the mother and grandmother of the victim girl and all the three witnesses have corroborated the evidence with each other. Further, 164 statement is also in confirmity to the evidence of the victim girl. P.W.7/Headmistress was examined to confirm the age of the victim who is of 12 years. He would further submit that on completion of investigation, charge sheet was filed against the petitioner/accused. The Trial Court being satisfied with the



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evidence and materials produced had rightly convicted the petitioner.

Learned Additional Public Prosecutor opposed this petition but fairly submitted that the Trial Court had suspended the sentence of the petitioner.

6.Considering the submissions made and on perusal of the materials, it is seen that P.W.1 to P.W.3 as well as the petitioner are neighbours and there was some dispute with regard to sharing of common amenities between them. The specific case is that the petitioner's wife often used to pick up quarrel with P.W.1 to P.W.3 while fetching water in the public tap. The initial version of the victim girl is that while collecting water, other residents were present and it is also natural that while collecting water in a public tap all the residents would be available. In such circumstances, the petitioner would have acted in that manner is highly doubtful. Further, the contention that the petitioner was in a drunken state due to which he embraced the victim girl is also not proved since the petitioner was arrested three days after the occurrence and there is no medical examination to confirm that the petitioner was in a drunken state. In view of the above and further taking into consideration of the fact that the Trial Court had already



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suspended the sentence, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.

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 Sessions Judge, Fast Track Mahila Court, Namakkal.

8. 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.

