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*Crl.M.P.No.17311 of 2023
in Crl.A.No.851 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2023

CORAM:

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

Crl.M.P.No.17311 of 2023
in Crl.A.No.851 of 2023

S.Rajkumar

... Petitioner

Vs.

The State represented by
The Inspector of Police,
Arani All Women Police Station,
Crime No.1 of 2021

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence on the petitioner by judgment dated 30.06.2023 passed in Spl.S.C.No.18 of 2021 on the file of the learned Sessions Judge, Special Court for Trial of Cases under POCSO Act, Tiruvannamalai and enlarge the petitioner on bail pending disposal of C.A.No.851 of 2023.

For Petitioner : Mr.S.Sagayanathan

For Respondent : Mr.S.Vinoth Kumar
Government Advocate [Crl. Side]



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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, Special Court for Trial of Cases under POCSO Act, Tiruvannamalai by judgment dated 30.06.2023 made in Spl.S.C.No.18 of 2021 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused in Spl.S.C.No.18 of 2021 was convicted by the Trial Court and sentenced to undergo twenty years rigorous imprisonment for the offence under Section 376(2)(n) of IPC and Sections 5(1), 5(j)(ii) r/w. 6 of Protection of Children from Sexual Offences Act, 2012 [POCSO Act] and to pay a fine of Rs.5,000/-, in default to undergo one year simple imprisonment.

3.The case of the prosecution is that the victim's date of birth is 18.02.2005, she had completed her X Standard and pursuing her XI Standard and also working as Salesgirl in a textile shop. The petitioner used



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to follow her when she was coming back from the job, enticed her, got her mobile number and he was constantly speaking with her. Though initially the victim resisted the same, thereafter she also started showing interest towards the petitioner. On 25.09.2020 at about 7.30 p.m. when the petitioner and the victim were alone in a secluded placed, sitting and chatting, the petitioner promised the victim that he would marry her and had physical relationship with her. Again on 17.10.2023, the petitioner had physical relationship with the victim. Thereafter, when the victim became unwell she was taken to Arani Government Hospital by her grandmother where P.W.6 examined the victim and found that the victim was three months pregnant. P.W.6 enquired the victim about the pregnancy and also finding that the victim was a minor, she informed the respondent Police about the same. Thereafter, the respondent enquired the victim, her grandmother, her sister and others and also found that the petitioner is the reason for the victim's pregnancy. The petitioner/accused was arrested and the victim was sent for medical examination. The victim had also given her 164 Cr.P.C. Statement. On collecting the medical reports and examination of Doctors, investigation completed and charge sheet filed against the



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petitioner/accused.

4.Before the Trial Court, on the side of the prosecution P.W.1 to P.W.12 were examined and Ex.P1 to Ex.P13 were marked. On the side of the petitioner/accused, no witness was examined and no documents were marked. On conclusion of the trial, the Trial Court convicted the petitioner as stated above.

5.The contention of the learned counsel for the petitioner is that the petitioner and the victim were in love with each other. At the time of occurrence, the petitioner was studying in Government Arts College, Cheyyar and the victim was studying in a School. During the Corona Pandemic period, the educational institutions were closed, both of them were idle in their respective houses, at that time they became friendly and they used to meet each other regularly. This blossomed into a love affair, the victim girl employed in a textile shop and they continued their relationship. Since the parents of the victim forced her to get married to an elderly person, she refused the same and forced the petitioner to take her



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along with him. He would submit that the victim had not complained that the love affair or the relationship was against her wish and it is during medical check up her pregnancy was found by P.W.6 and thereafter only, the victim girl informed her grandmother and her Aunt about the relationship. Now the victim had attained majority and the victim is still willing to marry the petitioner. The petitioner whose date of birth is 20.08.2002 is also willing to marry her. The father of the petitioner, namely, Mr.Sundar, who is present before this Court confirms that he will conduct the marriage between the petitioner and the victim which is also agreeable to the victim girl. It is seen that the victim's natural mother passed away when she was three months old, thereafter the victim's father married another lady and living separately. The victim's sister got married and settled in Tiruppur and the victim was under the care of her grandmother. The grandmother of the victim girl also given supporting affidavit agreeing that the marriage and now the petitioner and the victim girl are in the marriageable age and there is no serious objection from either side.

6.The learned Government Advocate [Crl. Side], on instructions from



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the respondent police confirms that there is no major difference of opinion between the petitioner and the victim's family. The victim's grandmother confirms about the affidavit filed and the victim girl also given confirmation statement in this regard. He would also submit that the petitioner's father agreed that if the petitioner is enlarged on bail he will conduct the marriage between the petitioner and the victim girl and bring them before this Court as husband and wife.

7.Considering the submissions made and on perusal of the materials, it is seen that the victim girl's date of birth is 18.02.2005, the petitioner's date of birth is 20.08.2002, both of them attained majority and now they are at the marriageable age. The petitioner is the first generation graduate who had completed his degree from Government Arts College, Cheyyar. The parents of the petitioner have a cherished hope that the petitioner's education would not be spoiled, he would get proper employment and their family status might get elevated due to the education imparted to the petitioner and their hope is that the petitioner's education should not go wasted. Further, the petitioner's father had given an undertaking that as



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soon the petitioner is enlarged on bail, he will conduct the marriage between the petitioner and the victim. In view of the same, this Court finds that confining the petitioner further would only be doing harm and injustice to the petitioner and the victim. Hence, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.

8. 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 released forthwith, on condition that he shall execute own bond for a sum of Rs.5,000/- (Rupees Five Thousand only) to the satisfaction of the Superintendent of Police, Central Prison, Vellore.

9. In view of the affidavit and also undertaking given by the petitioner's parents, the appeal itself can be taken up for final disposal. The Registry is directed to prepare the typed set of papers and **post the main appeal on 05.12.2023.**



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M. NIRMAL KUMAR, J.

cse

10. Accordingly, this Miscellaneous Petition is ordered.

10.11.2023

cse

Note: Issue order copy on 10.11.2023

To

1. The Inspector of Police,
Arani All Women Police Station,
2. The Sessions Judge,
Special Court for Trial of Cases
under POCSO Act,
Tiruvannamalai.
3. The Superintendent,
Central Prison, Vellore.
4. The Public Prosecutor,
High Court, Madras.

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