



*Crl.M.P.No.17230 of 2023
in Crl.A.No.1220 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2023

CORAM:

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

Crl.M.P.No.17230 of 2023
in
Crl.A.No.1220 of 2023

Annamalai

... Petitioner

Vs.

The State rep. by
The Inspector of Police,
All Women Police Station,
Palladam, Tirupur District,
Crime No.3 of 2014

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence and enlarge the petitioner on bail imposed in S.C.No.212 of 2015 dated 05.08.2023 passed by the learned Sessions Judge, Mahalir Neethimandram [Fast Track Mahila Court] Tiruppur pending disposal of the above criminal appeal.

For Petitioner : Mr.M.Vignesh

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Sessions Judge, Mahalir Neethimandram [Fast Track Mahalir Court] Tiruppur by order dated 05.08.2023 made in S.C.No.212 of 2015 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused was convicted by the Trial Court in S.C.No.215 of 2015 by judgment dated 05.08.2023 for the offence under section 4 of Tamil Nadu Women Harassment Act and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo six months simple imprisonment. Against which, the present appeal is filed along with suspension of sentence.

3.The case of the prosecution is that on 29.08.2013 at about 11.30 p.m., when the victim girl who is said to be mentally ill was sleeping at her house, A1 who is the cousin of the victim girl entered into the house, forced



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her and had physical relationship with the victim girl. A1 continued this on several occasions. Thereafter, the victim became pregnant. Hence, P.W.1/brother of the victim and D.W.1/mother of the victim shifted their residence to Arivoli Nagar. The petitioner/A2 coming to know about these facts, taking advantage of the situation, on 10.01.2014 at 2.00 p.m., dragged the victim girl, hugged and kissed her. Thereafter, she raised alarm, complaint was lodged and case was registered.

4.Before the Trial Court, on the side of the prosecution P.W.1 to P.W.10 were examined and Ex.P1 to Ex.P10 were marked. On the side of the petitioner/accused, D.W.1 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 has been falsely implicated in this case since he questioned P.W.1 and D.W.1, namely, brother and mother of the victim girl for not properly



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taking care of the victim and allowed her to get spoiled. He would submit that at that point of time the victim was four months pregnant, the petitioner is said to have scolded and abused her and hence, the petitioner had been falsely implicated in this case. Later P.W.1 and D.W.1 realizing their mistake have not deposed anything against the petitioner. He further submitted that P.W.3, another resident with whom the petitioner had some misunderstanding, taking advantage of the same deposed against the petitioner as though D.W.1 raised alarm on the act of the petitioner. But D.W.1/mother of the victim girl had not stated so. Hence, the evidence of P.W.3 is highly doubtful. He would submit that the Trial Court without considering the evidence had convicted the petitioner on moral grounds. He further submit that the Trial Court had suspended the sentence imposed on the petitioner till today [15.11.2023].

6.Learned Additional Public Prosecutor submits that the petitioner/A2 and A1 are close relatives. The petitioner on coming to know about the act of A1 committing rape on the victim girl, who is mentally ill and she became pregnant, taking advantage of the situation, he attempted to hug and



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kiss the victim girl. Thereafter, she raised alarm, complaint was lodged and case was registered. Later the petitioner's with his money and muscle power threatened P.W.1 and D.W.1. He would submit that the Trial Court on the evidence of P.W.3 had rightly convicted the petitioner. He would further submit that the petitioner has got nothing to do with the act of A1 and the petitioner's act is confined to the act committed by him on 10.01.2014. He fairly submitted that the Trial Court had already suspended the sentence imposed on the petitioner.

7.Considering the submissions made and on perusal of the materials, it is seen that P.W.1/brother of the victim girl and D.W.1/mother of the victim girl had not stated anything against the petitioner which causes doubt on the evidence of P.W.3 and hence, the evidence of P.W.3 has to be re-considered. Further, the Trial Court had already suspended the sentence imposed on the petitioner till today [15.11.2023]. In view of the same, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.



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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 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, Magalir Neethimandram [Fast Track Mahile Court], Tirupur.

9. 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.

10. Accordingly, this Miscellaneous Petition is ordered.

15.11.2023

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Note: Issue order copy on 16.11.2023



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To

- 1.The Inspector of Police,
All Women Police Station,
Palladam, Tirupur District.
- 2.The Sessions Judge,
Mahalir Neethimandram
[Fast Track Mahila Court]
Tiruppur.
- 3.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

cse

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