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Crl.M.P.No.18454 of 2023 in Crl.A.No.520 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.18454 of 2023
in Crl.A.No.520 of 2023

Rekha Banu

... Petitioner

Vs.

State,
The Inspector of Police,
All Women Police Station,
Erode District.

Ref: Cr.No.10/2018 dt.04.05.2018

U/s.Gril Missing Non Act @ 366(A) of IPC,
6 of POCSO Act, 9 of CH. MRG Act, 2006.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C., to suspend the sentence imposed in the judgment in order passed by the Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Erode, in S.S.C.No.1 of 2019 vide his order dated 07.01.2021 and enlarge the petitioner on bail pending disposal of the above Criminal Appeal Petition before this Court.

For Petitioner : Mr.Deepanuday

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor



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ORDER

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This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Erode (Trial Court) in Special Sessions Case No.1 of 2019, dated 07.01.2023 till the disposal of the main Criminal Appeal.

2.The petitioner was convicted by the Trial Court and sentenced to undergo three years imprisonment and to pay a fine of Rs.5,000/- in default to undergo three months Simple Imprisonment for offence under Section 366(A) IPC. Challenging the same, the present Criminal Appeal is filed. Similarly, for offence under Section 6 of the Protection of Children from Sexual Offence Act, 2012, A1 was convicted and sentenced to undergo twenty years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo three months Simple Imprisonment.

3.The case of the prosecution is that the defacto complainant/PW1 is having two sons and one daughter/PW2, who is aged about 16 years and her



date of birth is 27.07.2002 at the time of occurrence. The defacto complainant/PW1 had gone to her relatives house to attend function, thereafter, when she returned back home, her daughter/PW2 found missing, hence, she lodged a complaint to the respondent Police for girl missing. During the course of investigation, on 04.05.2018, the respondent Police received information from Kudipala Police Station, Andhra Pradesh about the victim girl/PW2, thereafter, the respondent Police reached Kudipala Police Station and secured her. Then, statement under Section 164 Cr.P.C., of PW2 recorded, which revealed that A1, got married the victim girl and had penetrative sexual assault with her. It is also revealed the petitioner, neighbour of the victim girl introduced her to A1 through facebook, facilitated their chats, meetings and finally, made believe her that the victim girl will have a very rosy life since A1 was working in Qatar and she can get rid of the difficult life which she is presently undergoing with her mother and family. Believing the words, the victim girl had given wishes to the petitioner and A1, thereafter, A1 took her to various places and finally, to Andhra Pradesh and had penetrative sexual assault. After securing the victim girl, she was subjected to medical examination. The Doctor (PW10)



also confirmed the victim girl was being subjected to the penetrative sexual assault. Both A1 and A2 were arrested and after investigation, charge sheet filed before the trial Court.

4.During trial, on the side of the prosecution, eleven witnesses examined as PW1 to PW11 and twenty documents marked as Exs.P1 to P20 and one material object marked as MO1. On the side of the defence, no witness examined and no document marked. The trial Court on the evidence and materials produced, convicted the accused as stated above.

5.The learned counsel for the petitioner submitted that the petitioner facilitated the interaction between the victim girl and A1 through facebook but in this case, admittedly, no facebook postings or any details with regard to facebook chats, whatsapp chats or any other conversation or materials produced. Since the petitioner being the neighbour of the victim girl, she has been falsely implicated in this case. The victim girl having relationship with A1 and having touch regularly is not denied. The petitioner only happens to be a facebook friend of the petitioner, nothing more. It is further



projected that the petitioner took the victim girl in two wheeler and handed over her to A1. There is no evidence to confirm the same. The trial Court merely on the presumption and assumption, had convicted the petitioner. He further submitted that the petitioner got married having two school going children and now, they are taking care of the petitioner's mother. The petitioner is in prison from 06.07.2023 and presently, confined in Central Prison, Coimbatore.

6.The learned Additional Public Prosecutor appearing for the respondent Police submitted that in this case, the sentence of the petitioner was suspended after the judgment rendered on 07.01.2021. The suspension was for the period of one month. The petitioner thereafter filed no appeal and got any suspension, she absconded herself. In the meanwhile, the appeal of A1 in C.A.No.553 of 2021 was dismissed by this Court by judgment dated 20.09.2022 confirming the conviction and sentence of the Trial Court. In this case, the victim girl is neighbour to the petitioner. The petitioner is an active person in facebook, was friendly with A1. A1, who was in Qatar used to regularly post chats between them. The victim girl was



introduced by the petitioner to A1, thereafter, she facilitated the interaction providing her mobile to the victim girl to keep in touch with A1. Later, she took the victim girl in two wheeler and handed over to A1. A1 took her to various places initially Andhra Pradesh where he committed penetrative sexual assault. With the above aspects, this Court confirms the conviction and sentence of A1 and dismissed the appeal. He further submitted the petitioner was absconded and with great difficulty, she was apprehended on 06.07.2023. If the petitioner is granted bail, she would again abscond. Hence, opposes the bail application.

7.Considering the submissions and on perusal of materials, it is not in dispute that the petitioner is a woman having school going children, the petitioner was convicted for offence under Section 366(A) IPC and sentenced to undergo three years Rigorous Imprisonment. The petitioner is in prison from 06.07.2023. In this case, no electronic gadgets or any postings seized or produced which seems to be primary link to connecting the petitioner with A1 as well as facilitating A1 and the victim girl to have relationship and become friendly. Further, there is no evidence confirming



that the petitioner kidnapped the victim girl from her lawful guardian.

Earlier sentence on the petitioner was suspended by the Trial Court, but within time could not file appeal and suspension of sentence petition seeking bail.

8.In view of the above, this Court is inclined to suspend the sentence of the petitioner till the disposal of the main criminal appeal. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the criminal 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.

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 criminal 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



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other day in lieu of the date of his absence as directed by the Trial Court.

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M. NIRMAL KUMAR., J.

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10. Accordingly, this Miscellaneous Petition is ordered.

12.12.2023

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Note: Issue Order Copy on 15.12.2023.

To

1. The Sessions Court,
Magalir Neethimandram (Fast Track Mahila Court),
Erode.
2. The Inspector of Police,
All Women Police Station,
Erode District.
3. The Superintendent of Police,
Central Prison, Coimbatore.
4. The Public Prosecutor,
High Court, Madras.

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