



Crl.M.P.No.17784 of 2023 in Crl.A.No.1270 of 2023

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M.NIRMAL KUMAR., J.

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the learned Sessions Judge, Magalir Neethi Mandram, Fast Track Mahila Court, Erode in Special S.C.No.41 of 2021, dated 07.10.2023 wherein the petitioner was convicted for offence under Section 7 punishable under Section 8 of Protection of Children from Sexual Offence Act, 2012 and sentenced to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.3,000/-, in default to undergo three months Simple Imprisonment.

2.The order of this Court, dated 09.11.2023 is extracted as follows:

“Learned counsel for the petitioner submits that in this case, PW1 is the victim, PW2 is the father and PW3 is the Aunt of the victim and PW4 is the house owner. PW11 is the doctor who had examined the victim. There seems to be money dispute between PW3 and the petitioner which is not seriously disputed. The petitioner had been falsely implicated in this case, due to money dispute. PW4/house owner confirms that the petitioner has been a tenant under him for the past eight years and is a man of good character. PW11, the doctor who had



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examined the victim submits that there is no mark or anything to show that the victim was sexually assaulted. Further he submits that PW13 who had recorded the 164 statement of the victim girl, confirmed that the victim had not stated how the sexual assault had been committed on her. These factors have to be considered in a proper perspective.

2.Learned Additional Public Prosecutor seeks for a small accommodation to get instructions and to file his counter.

3.Counsel for the petitioner submits that the lower court had suspended the sentence of the petitioner. In view of the same, the respondent is directed not to take any coercive steps in this case.”

3.In continuation and conjunction to the above order, dated 09.11.2023, this Court is passing the following order.

4.The learned Additional Public Prosecutor appearing for the respondent Police filed counter and submitted that the victim girl was examined as PW1 during trial, she deposed in conformity to the complaint (Ex.P2) as well as the statement under Section 164 Cr.P.C., (Ex.P1). PW2 is the father of the victim girl who lodged the complaint (Ex.P2). PW3 is the Aunt of the victim girl in whose house the victim girl was staying at the time



of occurrence. PW4 and PW5 are hearsay witnesses, supported the case of the prosecution. PW10 is the witness to the Observation Mahazar, speaks about the drawing of mahazars. The victim girl was a minor at the time of occurrence is proved by the evidence PW8, Headmistress. PW11, the Doctor examined the victim girl, issued O.P receipt (Ex.P11) and Accident Register (Ex.P13) confirming that there is no mark or unusual change on the victim girl. PW11 is the other Doctor who confirmed and gave opinion (Exs.P19 to P21) which is also in conformity to the evidence of PW10. The other witnesses are official witnesses. On conclusion of trial, the trial Court convicted the petitioner as stated above. He further submitted that the trial Court had suspended the sentence of the petitioner finding that the petitioner was on bail during investigation and trial. But, opposed the suspension of sentence.

5.Considering the submissions and on perusal of the materials, it is seen that the petitioner and the victim girl were interest with each other and they were in talking terms. On the date of occurrence, nobody was at home. Both of them are teenagers, their interest to each other is also not seriously disputed. Due to the age and physiological change, not knowing the seriousness and consequences, such act had been taken place. Further, the



trial Court had suspended the sentence of the petitioner.

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6. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the present 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.

7. Further, the petitioner shall appear before the Trial Court once in three month at 10.30 a.m., til 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.

23.11.2023

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