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*Crl.M.P.No.471 of 2024
in Crl.A.No.65 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2024

CORAM:

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

Crl.M.P.No.471 of 2024
in
Crl.A.No.65 of 2024

Velmurugan
S/o.Sigamani

... Petitioner/A1

Vs.

The State by
The Inspector of Police,
All Women Police Station,
Thirukovilur, Villupuram District.
(Ref.Crime No.50 of 2019
dated 19.09.2019)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) of Cr.P.C to suspend the sentence imposed against the petitioner vide judgment dated 06.12.2023 in S.C.No.223 of 2020, on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram, pending disposal of the above Criminal Appeal and enlarge the petitioner on bail.

For Petitioners : Mr.N.Chandrasekaran, Senior Counsel
For Mrs.Shabana

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence of imprisonment imposed on him in S.C.No.223 of 2020 by a judgment dated 06.12.2023 passed by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/A1 in S.C.No.223 of 2020 was convicted by the trial Court by judgment dated 06.12.2023 for offences under Sections 376 and 417 IPC and sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.10,000/- for offence under Section 376 IPC and one year rigorous imprisonment and to pay a fine of Rs.1,000/- for offence under Section 417 IPC, against which, the petitioner/A1 preferred a appeal in Crl.A.No.65 of 2024 before this Court along with suspension of sentence petition.



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3. This Court, on 14.02.2024, had passed the following order:

“The petitioner was tried along with A2 to A5 for offence under Sections 376, 417, 294(b), 506(i), 309 r/w 109 of IPC and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act. After ful-fledged trial, the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Villupuram (Trial Court) acquitted A2 to A5 from the charges levelled against them, but convicted the petitioner/A1 for offence under Section 417 of IPC and sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo one month Simple Imprisonment. Challenging the same, the petitioner/A1 is before this Court.

2. The learned Senior Counsel appearing for the petitioner submits that the victim girl (PW2) is a major, knowingly had relationship with the petitioner both mentally and physically. It is only the parents of the victim girl (PW2) who opposed the marriage, hence, the formal marriage could not be performed. Apart from it, the victim girl (PW2) was earlier married and got separated from her first husband, but it has not been legally done so. Hence, there was an impediment for the petitioner to perform the marriage. The victim girl (PW2) and her parents were forced the petitioner to marry the victim girl (PW2). When the petitioner had expressed his difficulty, they pressurized. In fact it was the petitioner and the victim girl were living separately for sometime. He further submits that even today, the petitioner is willing to take her into his life.

3. The learned Government Advocate (Crl. Side) appearing



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for the respondent Police is directed to verify through the respondent Police whether the victim girl (PW2) is still interested to continue the relationship with the petitioner.

4.Post the matter for orders on 04.03.2024.”

4.In continuation and conjunction to the earlier order passed by this Court on 14.02.2024, the learned Government Advocate produced the statement of victim/PW2, who informed that she is not interested to marry the petitioner and live. This information was disclosed by her on 20.02.2024, copy of the statement produced.

5.The learned Senior Counsel for the petitioner submitted that from the statement of the victim it is seen that the victim had earlier married one Balamurugan and she was living with him and thereafter she got separated, employed in Tiruppur and living separately. At that time, the petitioner, who earlier had love affair with the victim, started to continue his relationship. The victim girl is a major is not in dispute. According to the petitioner, the petitioner used to visit her in Tiruppur and her native place and whenever nobody was there they used to had physical relationship and knowingly the victim girl had relationship with the petitioner and now terming it as rape is



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not proper. He pointing out to the evidence of PW1, the father of the victim, wherein he states that in the police station marriage between the petitioner and the victim had took place despite the subsistence of victim girl's earlier marriage with Balamurugan. He further submitted that the petitioner is in prison for 88 days. The primary complaint is that petitioner's parents objecting to the marriage between the petitioner and the victim girl. Further submitted that the petitioner has arguable points and fair chance of success in this appeal. Hence, he prays for granting suspension of sentence to the petitioner.

6.The learned Government Advocate (Crl. Side) on the other hand filed his counter and submitted that based on the complaint given by the de-facto complainant, a case was registered in Thirukoilur AWPS in Crime No. 50 of 2019 under sections 417, 376, 294(b), 323, 355, 506(i) of IPC and under section 4 of Tamil Nadu Prohibition of Harassment of Women Act on 19.09.2019. The Inspector of Police Tmt.P.Sumathi took the case for Investigation and prepared rough sketch and observation mahazar in the presence of witnesses. She also examined the witnesses and recorded their statements. On 19.09.2019 by 17.30 hours, the Inspector of Police arrested



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the accused 1 to 3 and recorded the voluntary confessional statement given by the Petitioner/1st Accused in the presence of witnesses. The Inspector of Police subjected the 1 to 3 Accused to judicial custody. Later, the Inspector of Police subjected the victim for medical examination and also taken initiative to examine the victim under Section 164 of Cr.P.C. Further, the Inspector of Police subjected the 1st accused for medical examination. The Inspector of Police examined the remaining witnesses of this case and recorded their statements.

6.1.He further submitted that after completion of elaborate and detailed investigation, on 19.11.2019, the then Inspector of Police filed a final report against all the accused under Sections 417, 376, 294(b), 323, 355, 506(i) of IPC and under section 4 of Tamil Nadu Prohibition of Harassment of Women Act before the Learned Judicial Magistrate Court, Thirukoilur and the same was taken on file in PRC No.38 of 2019. On the appearance of all the accused, the case was committed to the Court of Sessions, Villupuram. This case was taken on file by the Court of Sessions, Villupuram in Sessions Case No.223 of 2020 and the same was made over to the learned Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Villupuram for trial and disposal according to law. To prove the case



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of the prosecution, 14 witnesses examined and 17 exhibits marked. On the defense side, no witness examined and no exhibit and material object marked. The trial Court after full-fledged trial, convicted the accused by its judgment in S.C.No.223 of 2020 dated 06.12.2023 as stated above.

6.2.He fairly submitted that on 20.02.2024, the victim was called and she was enquired to find out whether she is interested to marry the petitioner. She stated that the petitioner is already married and she was also already married and she had been in physical relationship with the petitioner on the false promise of marriage, hence, she lodged a complaint. Further her jewels, cash and earnings were taken away by the petitioner, which the petitioner refused to return. Hence, prays for dismissal of the petition.

7.Considering the submissions made and on perusal of the material available on record, it is seen that the petitioner and the victim/PW2 are major. The victim had consensual relationship with the petitioner both at Tiruppur and at her native place for quite some time and further the primary allegation is that the petitioner's parents refused for marriage and for that reason only the victim lodged a complaint but the trial Court acquitted the



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petitioner's parents from this case. Admittedly, there is no cross appeal against the acquittal. The victim was also in categorical term stating that she is not interested to marry the petitioner and continue her relationship with him. In view of the same, this Court is inclined to suspend the sentence imposed on the petitioner.

8. Accordingly, the relief of suspension of sentence and bail are granted to the petitioner on the following conditions till the disposal of the above Criminal appeal:

(a) The petitioner/A1 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 learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram.

(b) The petitioner/A1 and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Judge may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.



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(c) The petitioner/A1 shall appear before the Trial Court once in three months at 10.30 a.m. on the first working day of the month, 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.

9. Accordingly, this Criminal Miscellaneous Petition is ordered.

04.03.2024

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Note: Issue order copy on 05.03.2024

To

- 1.The Inspector of Police,
All Women Police Station,
Thirukovilur, Villupuram District.
- 2.The Sessions Judge, Magalir Neethi Mandram
(Fast Track Mahila Court), Villupuram.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
- 4.The Public Prosecutor, High Court, Madras.



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M. NIRMAL KUMAR, J.

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