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*Crl.M.P.No.782 of 2024
in Crl.A.No.82 of 2024*

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M.NIRMAL KUMAR, J

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence of imprisonment imposed on him in Spl.C.C.No.18 of 2018 by a judgment dated 15.12.2023 on the file of the learned Sessions Judge, Fast Track Mahila Court, Namakkal and to enlarge the petitioner on bail pending disposal of the above Appeal.

2. The petitioner/Accused in Spl.C.C.No.18 of 2018 was convicted by the Trial Court for the offence under Section 363 of IPC and Section 7 r/w 8 of POCSO Act and the petitioner was sentenced to undergo Rigorous Imprisonment of 3 years and to pay a fine of Rs.2,000/- in default, to undergo Simple Imprisonment for 3 months for the offence under Section 363 of IPC and to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default, 3 months Simple Imprisonment. Aggrieved against the same, the present appeal has been filed by the petitioner/accused. The present miscellaneous petition seeking suspension of sentence and bail is filed by the accused.



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3. During trial, on the side of the prosecution, PW1 to PW19 examined and marked Exs.P1 to P17. On the side of the defence, no witness was examined and no document was marked. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, had convicted the petitioner as stated above.

4.The contention of the learned counsel for the petitioner the petitioner was working as a Supervisor in a Mill and the victim was also working there. The victim's parents made arrangements for her marriage against her wish, for which, she was disturbed about the attitude of her parents and she wanted to end her life. At that time, the victim girl had got into relationship with the petitioner. On 06.05.2017 the petitioner/accused asked the victim girl to come to the Paramathi Bus stand and thereafter, the petitioner took the victim girl to his house and stayed there for 3 days and later the victim had come back. Later, the parents of the victim girl gave a complaint as though the petitioner kidnapped the victim and taken her to a isolated place and hugged her and committed sexual assault on her. He further submitted that from Ex.P10/medical certificate, it is seen that there is no injuries to show that the victim girl was forced except hymen found not intact. PW2/victim girl in her



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statement/Ex.P4 stated that the petitioner had only hugged her and nothing more. Whether it was with the intention of sexual assault or not is a subjective factor to be decided. It is seen that the victim girl had voluntarily accompanied the petitioner, which could be evidenced from Ex.P10, wherein the victim girl states that she had voluntarily joined the petitioner. Therefore, there is no question of kidnapping. Further, the petitioner and the victim were in love relationship and unknowingly due to the adolescent age, the stayed for two days together. But not committed penetrative sexual assault. Hence, he prays for granting suspension of sentence to the petitioner.

5. The learned Government Advocate (Crl. Side) on the other hand filed his counter and submitted that the case of the prosecution is that the victim girl started working in P.N.Textile Mill at Thottiyanthoppu on 03.05.2017 and the victim girl had got into relationship with Selvaraj [petitioner/accused] who worked as a Supervisor in the said P.N.Textile and on 06.05.2017, the accused asked the victim girl to come to the Pramathi Bus Stand and when the victim girl went to the Pramathi Bus Stand, the accused took the victim girl to his house at Neruppur Village, Pennagaram Taluk, Dharmapuri in a bus and stayed there from 06.05.2017 to 11.05.2019, while



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residing there, the accused hugged the victim girl and had sexual harassment on her.

5.1. It is submitted that based on the above complaint, a case was registered in Pramathi Police Station, crime No.145 of 2017, u/s 366A of IPC on 06.05.2017 at about 17.30 hours by Tr.Tirumoorthy, the Sub Inspector of Police and the same was submitted before Tr.Gulasekaran, then Inspector of Police and took up the case for investigation.

5.2. It is submitted that during the course of investigation, then Inspector of Police went to the scene of occurrence and drew rough sketch and prepared observation mahazar in the presence of witnesses and examined the witnesses and recorded their statements.

5.3. It is submitted that during the course of investigation, on 12.05.2017, then Inspector of Police arrested the petitioner/accused and recorded his confession statement in the presence of witnesses and later, he produced before the Learned Judicial Magistrate No.II, Paramathi and sent to remand for judicial custody.

5.4. It is submitted that after completion of elaborate and detailed investigation, based on the statements of witnesses, material evidence, on



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10.07.2017, then Deputy Superintendent of Police altered the section 366 IPC and sec 3(2) (v), 3(1) (r), 3(1)(s) of SC/ST [POA] Act & sec.7 & 8 of POCSO Act, 2012 and then filed a charge sheet against the accused before the Sessions Judge, Fast Track Mahila Court, Namakkal and the same was taken on file vide Spl.C.C.No.18 of 2018.

5.5. It is submitted that the prosecution has examined P.W.1 to P.W.19 witnesses and marked Ex.P1 to Ex.P17 exhibits and no material objects were marked. On the defence side, no witnesses were marked, no exhibits and no material objects were marked.

5.6. PROSECUTION WITNESSES:-

<i>Rank of Witnesses</i>	<i>Witnesses</i>	<i>Gist of the Deposition</i>
P.W.1	Defacto complainant/mother of PW.2	Deposed the narrated the facts of the case and lodged a complaint before the respondents Ex.P.1-complaint Ex.P.2-signed in FIR
P.W.2	Victim	Deposed that corroborated the same version of P.W.1 and given statement before the Court Ex.P.3-birth certificate Ex.P.4-164 Cr.P.C statement
P.W.3	Hearsay witness	Treated as hostile
P.W.4	T.Murugan/observation mahazar	Treated as hostile
P.W.5	Tr.Srinivasan/ hearsay	Deposed that on the date of



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	witness	occurrence P.W.1 enquired about P.W.2, he replied that P.W.2 did not come to work
P.W.6	Tmt.Kalaivani/hearsay witness	Treated as hostile
P.W.7	Tr.Seshathiri/hearsay witness	Deposed that on the date of occurrence P.W.1 enquired about P.W.2, he replied that P.W.2 did not come to work
P.W.8	Tr.Silambar/confession witness	Deposed that attested in the confession statement of the accused Ex.P5
P.W.9	Tr.Rajagopal/Tashildar	Deposed that as per request of I.O, issued community certificate of Ex.P6 & 7 of the victim
P.W.10	Dr.Kannan/G.H, Namakkal	Deposed that examined the accused and issued certificate Ex.P8
P.W.11	Tmt.Karpagam/Tashildar	Deposed that as per request of I.O, issued community certificate of the accused Ex.P9
P.W.12	Tr.Mani/eye witness	Treated as hostile
P.W.13	Dr.Sathiya/G.H., Rasipuram	Deposed that as per request of I.O, conducted medical examination of the victim and issued certificate Ex.P20
P.W.14	Tr.Ashok/eye witness	Treated as hostile
P.W.15	Tr.Dharmalingam/eye witness	Treated as hostile
P.W.16	Tr.Sivasamy/Head Master	Deposed that as per request of I.O, issued transfer certificate of the victim Ex.P11
P.W.17	Tr.Tirumoorthy/Sub Inspector of Police	Deposed that received a complaint from P.W.1, based on that, a case was registered in Cr.No.145/2017, u/s.366A and the same was submitted before I.O. for investigation Ex.P12



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P.W.18	Tr.Kulasekaran/Inspector of Police	Deposed that took up the case for investigation, went to place of occurrence, prepared observation mahazar and rough sketch, examined the witnesses and recorded their statements.
P.W.19	Tmt.Sujatha/Deputy Superintendent of Police	Deposed that took up the case for further investigation, examine the witnesses and recorded their statements, arrested the accused and sent to remand and sent both the accused and victim for medical examination before the Hospital. After completion of investigation, altered the section and filed final report before the competent court in accordance with law.

5.7. It is submitted that after conclusion of due trial, the trial Court by its judgment in Spl.C.C.No.18 of 2018, dated 15.12.2023 on the file of the Sessions Judge, Fast Track Mahila Court, Namakkal and convicted the petitioner/appellant/accused and sentenced him as follows:

U/s.363 of IPC	Sentenced him to undergo R.I for 3 years and imposed fine of Rs.2000/- i/d to undergo S.I for 3 months
U/s.7 r/w 8 of POCSO Act, 2012	Sentenced him to undergo R.I for 3 years and imposed fine of Rs.2,000/- i/d to undergo S.I for 3 months

5.8. It is further submitted that based on the evidence of the prosecution witnesses supported by the medical version and the prosecution exhibits, the Trial Court has rightly convicted the accused. The Trial Court



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convicted the accused only after scrutinizing the evidence has proved each and every circumstances pointing to the guilt of the accused and the prosecution have proved the case beyond all reasonable doubts. Hence, prays for dismissal of the petition.

6. Considering the facts and circumstances of the case, the submissions made on either side and the fact that the victim in her statement has stated that she had voluntarily gone with the petitioner, both the petitioner and victim were in a precarious age, not knowing the seriousness, emotionally got into entanglement, this Court is inclined to suspend the sentence imposed on the petitioner.

7. Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal Appeal:

(a) The petitioner/accused 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) each, with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Fast Track Mahila Court, Namakkal.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety



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bonds and the learned Judge may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioner 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.

8. Accordingly, this Criminal Miscellaneous Petition is ordered.

06.03.2024

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To

1.The Deputy Superintendent of Police,
Velur Sub-Division,
Namakkal District.

2.The Sessions Judge
Fast Track Mahila Court,
Namakkal.

3.The Public Prosecutor,
High Court, Madras.



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