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*Crl.M.P.No.1944 of 2024
in Crl.A.No.150 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2024

CORAM:

THE HON'BLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.1944 of 2024

in

Crl.A.No.150 of 2024

Pallupandi @ Chella Pandi @ Selvapandi

... Petitioner

Vs.

State represented by
Inspector of Police,
S.11 Tambaram Police Station,
Tambaram, Chennai.

... Respondent

PRAYER: Criminal Miscellaneous Petitions filed under Sections 389(1) of Cr.P.C to suspend the sentence imposed by the learned Mahila Court, Chengalpattu in S.C.No.236 of 2012 dated 30.03.2023, convicting the petitioner/appellant under Section 366 IPC sentenced to undergo 7 years Rigorous imprisonment and also to pay a fine of Rs.5,000/- i/d to undergo simple imprisonment for 1 month and u/s 376 IPC sentenced to undergo 7 years Rigorous Imprisonment and also to pay a fine of Rs.10,000/- i/d to undergo simple imprisonment for 1 month and all the sentences are to run concurrently, and also directed to pay Rs.10,000/- to be paid as compensation for the victim girl u/s 357(3) of Crl.P.C. and enlarge the



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petitioner on bail pending disposal of the above Crl.Appeal.

For Petitioner : Mr.S.Hameed Ismail

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

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.236 of 2012 by a judgment dated 30.03.2023 on the file of the learned Sessions Judge, Mahila Court, Chengalpattu and to enlarge the petitioner on bail pending disposal of the above Appeal.

2. The petitioner/Accused in S.C.No.236 of 2012 was convicted by the Trial Court for the offence under Sections 366 and 376 IPC and the petitioner was sentenced to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default one month Simple Imprisonment for the offence under Section 366 of IPC and to undergo 7 years Rigorous Imprisonment and fine of Rs.10,000/- in default one month 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 PW10 examined and marked Exs.P1 to P9. On the side of the defence, no witnesses examined and no documents 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 is that the petitioner and the victim were in love with each other for three years, which was not agreeable to the victim's parents and family members. The victim has proposed to be married to a person of elderly age, arrangements were made by her parents against her wish. The victim called the petitioner and informed that she is confined and she is forced to marry as per her parent's wish. She also requested the petitioner to take her away. If the petitioner refused, she would end her life by taking extreme steps. The petitioner, having left with no other option, took the victim girl to Pudukottai, had a marriage on 20.01.2010. The petitioner belongs to Hindu religion and the victim to Muslim religion. The petitioner and the victim, fearing for life, surrendered before the Tambaram Police station. At that time, the petitioner arrested and remanded to judicial custody, the victim was taken by her



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parents. Due to the compulsion of the police, she was forced to state against the petitioner. During her evidence, she admits the marriage arrangements made by her parents against her wish. The petitioner on the compulsion of the victim to save her life, not knowing the consequences at that age, had a relationship which now led him to the gallows. 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 on 19.01.2010 at about 21.30 hours, the defacto complainant Tr.S.Sheik Thavuth Bilal, lodged a complaint before the respondent police that he is residing at No.50, 5th Cross Street, Renganathapuram, Chennai along with his family. He further states that on 19.01.2010 at about 07.30 hours, the complainant's father went to nearby grocery shop, when he returned home, the victim girl found missing. The de-facto complainant had suspicious on Tr.Pallupandi/accused that he might have kidnapped the victim girl. Hence, a complaint.

5.1. It is submitted that based on the above complaint, a case was registered in S-11, Tambaram P.S in Crime No.64 of 2010, U/s 363 IPC on 19.01.2010 at about 19.30 hours by Tr.Kalaiarasan, the then Sub Inspector of



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Police and the same was submitted before Tr.Lameck, the then Inspector of Police for further investigation.

5.2. It is submitted that during the course of investigation, the then Inspector of Police examined witnesses and recorded their statements.

5.3. It is submitted that during the course of investigation on 21.01.2010 at about 09.00 hours, the then Inspector of Police arrested the accused Pallupandi @ Chella Pandi @ Selvapandi and secured the victim girl from nearby Tambaram Bus Stand, recorded confession statement of accused and produced him before the Judicial Magistrate Court, Tambaram, produced for judicial custody.

5.4. The then Inspector of Police examined the victim girl obtained her confession statement, in which she reveals that she had love affair with the accused, believing the words of accused, on the day of occurrence, the victim eloped to Pudhukottai where the accused tied thali around the neck forcibly at Pillaiyar Kovil near Arimalam Bus Stop. Thereafter, the accused taken her to his uncle's house and committed penetrative sexual assault.

5.5. It is submitted that after completion of investigation, on 20.03.2010, the then Inspector of Police altered the section of this case into



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u/s 366(A), 376 IPC and on the same day, filed charge sheet against the accused before the Judicial Magistrate Court, Tambaram and the same taken on file vide PRC.No.104/2010 dated 04.09.2010. The case was committed to Mahila Court, Chengalpattu and the same was taken on file vide S.C.No.236/2012 dated 05.11.2012.

5.6. It is submitted that the trial Court framed charges against the accused. During trial, the prosecution has examined 10 witnesses and marked 9 exhibits to prove the case.

5.7. PROSECUTION SIDE WITNESSES :-

P.W.1	Tr.Sheik Thavuth Bilal/De-facto complainant	Deposed that incident happened to his sister and lodged a complaint before the respondent police station [Ex.P1]
P.W.2	Victim Girl	Deposed that she had love affair with the accused, believing the words of accused, on the day of occurrence, the accused eloped the victim girl to Pudhukottai and tied thali around the neck forcibly at Pillaiyar Kovil nearby Arimalam Bus Stop. Thereafter, the accused taken her to his uncle's house and forcibly sexual intercourse with her
P.W.3	Tr.Sayad Maythin/Father of the victim	Corroborates the same version of P.W.1
P.W.4	Tr.Rahumath John/Mother of the victim	Corroborates the same version of P.W.1
P.W.5	Dr.A.M.Premalatha	Issued Medical Certificate [Ex.P3] and



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	Gandhi	victim girl's age certificate [Ex.P4]
P.W.6	Tr.Kalaiarasan, Sub Inspector of Police	Deposed that he received a complaint from P.W.1 and the same was registered in Crime NO.64 of 2010, U/s. 363 IPC and the same submitted before P.W.7 for further investigation.
P.W.7	Dr.Thunderseep	Issued Medical report of accused [Ex.P7]
P.W.8	Tr.Lameck, Inspector of Police	Deposed that he took up the case for further investigation and then he have examined the witnesses and recorded their statements. Then he have arrested the accused and produced before the concerned court and remanded to judicial custody. After complete the investigation he has altered the section of this case and also filed a charge sheet before the competent court in accordance with law.
P.W.9	Tr.Salim	Hostile witness
P.W.10	Tr.Ponnaiyan	Hostile witness

5.8. It is submitted that after conclusion of trial, the trial court by its judgment in S.C.No.236 of 2012, dated 30.03.2023, convicted the appellant/accused and sentenced him as follows:

U/s.366 IPC	Sentenced him to undergo R.I for 7 years and imposed fine of Rs.5000/- i/d to undergo S.I for one month
u/s.376 IPC	Sentenced him to undergo R.I for 7 years and imposed fine of Rs.10,000/- i/d to undergo S.I for one month



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Hence, prays for dismissal of the petition.

6. On perusal of the materials, it is seen that the victim and the petitioner were in love with each other, they both belong to different religion, which seems to be the main reason for not accepting their relationship and marriage. Considering the submissions made that the victim now got married, she is living separately with her family and the petitioner also now married, has a family, of course both separately, 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 Judicial Magistrate, Tambaram.

(b) The petitioner/accused 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



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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 revision 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 Inspector of Police,
S-11, Tambaram Police Station,
Tambaram, Chennai.
- 2.The Judicial Magistrate
Tambaram.
3. The Superintendent,
Central Prison-1,
Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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