



Crl.M.P.No.16405 of 2023 in Crl.A.No.1105 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.02.2024
PRONOUNCED ON : 09.02.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.No.16405 of 2023
in Crl.A.No.1105 of 2023

Subash,
S/o.Nataraj @ Nagarajan.

... Petitioner

Vs.

State, represented by
The Inspector of Police (AWPS),
Sulur Police Station,
Coimbatore.
In Crime No.336 of 2019.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C., to suspend the sentence imposed in Spl.C.C.No.17 of 2020 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore, dated 20.07.2022 and grant bail to the petitioner pending disposal of the above Criminal Appeal.

For Petitioner : Mr.B.Bharathkumar for
Mr.V.Nicholas

For Respondent : Mr.C.E.Pratap
Government Advocate (Crl. Side)



ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the judgment, dated 20.07.2022 in Special C.C.No.17 of 2020 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore (Trial Court) and enlarge him on bail pending disposal of the main appeal.

2.The conviction and sentence of the petitioner are as follows:-

- The petitioner found guilty for offence under Section 5(l) r/w 6 of the Protection of Children from Sexual Offence Act, 2012, and Section 376(3) of IPC. As per Section 42 of the Protection of Children from Sexual Offence Act, 2012, the petitioner is punished under Section 376(3) of IPC and convicted and sentenced to undergo twenty years of Rigorous Imprisonment and to pay fine of Rs.20,000/- in default to undergo further three months Simple Imprisonment.
- For offence under Section 450 of IPC, the petitioner to undergo five years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo three months Simple Imprisonment.
- For offence under Section 506(i) of IPC, the petitioner to undergo one year Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo one month Simple Imprisonment.

3.The case of the prosecution is that the victim girl (PW1) had gone



along with her father (PW4) and step mother (PW3) to the respondent

Police on 16.04.2019 and lodged a complaint (Ex.P1) that the victim girl's (PW1) date of birth is 16.02.2004 and she was studying 10th std and thereafter, discontinued. Her father (PW4) and mother (PW2) are living separately for the past twelve years and her two sisters are residing with her mother (PW2). She along with her father (PW4) and step mother (PW3) are residing together. Her father (PW4) is a Driver. The petitioner is a relative of the victim girl's family and is living near her house at Peedampalli. Since the victim girl (PW1) on 12.04.2019 was not feeling well, she returned back to home from school and took rest. At about 10.00 a.m., the petitioner entered into the house of the victim girl (PW1) and committed penetrative sexual assault on her. The victim girl (PW1) got injured in her private parts and she suffered stomach pain. The petitioner threatened the victim girl (PW1) not to disclose this fact to her parents otherwise they would be killed. The petitioner used to visit the victim girl (PW1) regularly and continued his activities. Later, the victim girl (PW1) informed her step mother (PW3) about the act of the petitioner. PW3 informed her husband (PW4) the victim girl's father and thereafter, the complaint (Ex.P1) was lodged. On



receipt of the complaint (Ex.P1), the respondent Police enquired the victim girl (PW1), recorded the statement of the victim girl (PW1) and her parents, visited the scene of occurrence, prepared Observation Mahazar, Rough Sketch (Ex.P10), arrested the accused, recorded his confession statement. Both the victim girl (PW1) as well as the petitioner produced for medical examination and medical reports (Exs.P3 & P7). Thereafter, the victim girl (PW1) was produced before the learned Magistrate and her 164 Cr.P.C., statement (Ex.P11) recorded. On collection of evidence and materials, charge sheet filed against the petitioner.

4.During trial, on the side of the prosecution, thirteen witnesses examined as PW1 to PW13 and twelve documents marked as Exs.P1 to P12. On the side of the defence, no witness examined and no document marked. The trial Court marked one document as Ex.C1. On conclusion of trial, the trial Court convicted the petitioner as stated above. Challenging the same, the present Criminal Appeal and the Suspension of Sentence.



5.The learned counsel for the petitioner submitted that the petitioner

and the victim girl (PW1) are relatives and they were in love with each other.

PW2 and PW4 are the mother and father of the victim girl (PW1). PW3 is the step mother of the victim girl. PW2 and PW4 are living separately for the past twelve years. PW2 is living at Peedampalli village along with two other daughters. Her estranged husband (PW4) is living at Idayarpalayam. Initially, the victim girl (PW1) was living with her mother (PW2). On coming to know about the love affair between the petitioner and the victim girl (PW1), PW2 opposed the same and chased away the victim girl to her father's place. Thereafter, the victim girl (PW1) is living with her father (PW4) and step mother (PW3). On coming to know about the sexual assault, PW3 & PW4 forced the victim girl (PW1) to lodge the complaint (Ex.P1) against the petitioner otherwise she would not be permitted to reside along with them. Having no other option, the victim girl lodged the complaint (Ex.P1) with exaggerated version. The ration card and other identity proof confirms that the victim girl (PW1) was living with her mother (PW2) and not with her father (PW4) and step mother (PW3). Hence, the place of occurrence is changed.



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6.He further submitted that the victim girl (PW1) in her 164 Cr.P.C., statement neither stated anything about the past incident nor the date and time, she was subjected to the penetrative sexual assault at the hands of the petitioner. From 164 Cr.P.C., statement, it confirms that on compulsion, she lodged the complaint (Ex.P1) against the petitioner. PW2, PW3 and PW4 admitted that the petitioner and the victim girl (PW1) were in love relationship with each other prior to the occurrence. He further submitted that the victim girl (PW1) not inclined to depose against the petitioner and only on the compulsion and force, she deposed against the petitioner. Here in this case, due to adolescent age and due to their love relationship between them and not knowing the seriousness and consequence, the petitioner and the victim girl (PW1) had physical relationship, which is now projected against the petitioner. The evidence of the Doctor (PW9) is that she examined the victim girl (PW1) and gave report (Ex.P7) and final opinion (Ex.P8) finding there is no external injuries or marks or bruises confirming no force used. He further submitted that the victim girl (PW1) even today is not inclined to proceed against the petitioner.



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7.The learned Additional Public Prosecutor appearing for the respondent Police submitted that the victim girl aged 15 years was living with her parents and was studying 10th std at the time of incident. The victim girl's father (PW4) and mother (PW2) are living separately due to misunderstanding for the past 12 years before the incident. At the time of occurrence, the petitioner was living near the victim girl's (PW1) house and he is a relative of the victim girl. On 10.03.2019, when the victim girl was alone in her house, the petitioner trespassed into the house, forced her to take her clothes and sexually assaulted her. After that on 12.04.2019 when the victim girl was sleeping at home without going to the school due to her health condition, in the morning the petitioner came to her house and forcibly had penetrative sexual assault and also threatened not to disclose the same to anyone. Later, the victim girl informed the same to her step mother (PW3) and a complaint (Ex.P1) lodged to the respondent Police. On receipt of Ex.P1, an FIR in Crime No.336 of 2019 (Ex.P9) registered for offence under Sections 5(l), 5(m), 5(u) & 6 of the Protection of Children from Sexual Offence Act, 2012 and Sections 448 & 506(i) of IPC on



16.04.2019 by the Women Police Constable. During the course of investigation, the Inspector of Police went to the scene of occurrence, examined the victim girl and her parents, recorded their statements, prepared Observation Mahazar, Rough Sketch (Ex.P10) in presence of witnesses, arrested the petitioner on 16.04.2019 and produced the petitioner for remand. On completion of investigation, charge sheet filed before the trial Court and the same was taken on file as Special S.C.No.17 of 2020. On the side of the prosecution, thirteen witnesses examined as PW1 to PW13 and twelve documents marked as Exs.P1 to P12. After ful-fledged trial, the trial Court convicted the petitioner as stated above.

8.This Court considered the rival submissions and perused the materials available on record.

9.It is seen that on last occasion i.e., 22.01.2024, the victim girl appeared before this Court who attained majority now, confirmed that she had love relationship with the petitioner and only on her compulsion and force from her parents, she lodged the complaint (Ex.P1) against the



petitioner. She admits that due to adolescent age, physical and psychological changes without knowing the seriousness and consequence, both the petitioner and the victim girl had physical relationship.

10.The victim girl filed an affidavit confirming that both of them had physical relationship unknowingly. The petitioner's is at the prime age, now confined in prison. If continued to be detained, his entire future life will be spoiled in prison. It is seen that the place of occurrence has been shifted causing serious doubts about the occurrence proper. The medical evidence confirmed that there was no aggression, force and thereby causing injuries to the victim. Further, the victim girl now attained majority and confirms the love affair with the petitioner and she had contribution for the petitioner's act.

11.In view of the above, the judgment of the trial Court needs reassessment. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner is ordered to be enlarged on bail, on condition that he shall



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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.

12.The petitioner shall appear before the Trial Court on the first working day of once in three months at 10.30 a.m., till 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.

09.02.2024

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Note: Issue order copy on 09.02.2024

To

- 1.The Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act,
Coimbatore.
- 2.The Inspector of Police (AWPS),
Sulur Police Station,
Coimbatore.
- 3.The Superintendent,



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Central Prison, Coimbatore.

4. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR., J.

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