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Crl.M.P.No.4286 of 2024 in Crl.A.No.954 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.4286 of 2024
in Crl.A.No.954 of 2023

P.Selvakumar

... Petitioner

Vs.

The State by Inspector of Police,
All Women Police Station,
Perambalur.
Crime No.13/2019.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) the Code of Criminal Procedure, to suspend the sentence imposed upon the petitioner in Special Sessions Case No.8 of 2020 judgment, dated 30.12.2021 by the learned Sessions Judge, Mahila Court, Perambalur and enlarge the petitioner on bail pending disposal of the above criminal appeal.

For Petitioner	:	Mr.G.Ilamurugu
For Respondent	:	Mr.S.Raja Kumar Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the learned Sessions Judge, Mahila Neethimandram, Perambalur (Trial Court) *vide* judgment, dated 30.12.2021 in Special S.C.No.8 of 2020.



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2.The petitioner was convicted for offence under Sections 9(l), 9(m) & 9(n) r/w 10 of the Protection of Children from Sexual Offence Act, 2012 and sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment.

3.The learned counsel for the petitioner submitted that the defacto complainant/PW1 is the petitioner's second wife, there was some dispute between the defacto complainant/PW1 and the petitioner, for which, a false case has been projected against the petitioner by using the victim girl/PW2 who was born to the defacto complainant/PW1 through her first husband. The case projected is that on 18.03.2019, the petitioner is said to have hugged the victim girl/PW2 against her wish with sexual intent which fact was informed to PW1 and PW1 warned the petitioner. On 19.04.2019, there was temple festival in the village and the petitioner is said to have danced during the festival. At about 02.00 a.m., the petitioner said to have entered into the house and molested the victim girl. PW1 picked up a quarrel with the petitioner and thereafter, he left the house. PW4, the brother of PW1 and PW3, grandmother of the victim girl witnessed the petitioner chased out from the house after



picking up a fight. He further submitted that since there was dispute between the petitioner and PW1, a false case has been lodged against him. The victim girl stated that her mother and the petitioner used to pick up quarrel and have fight. Further, she gave different version that on the fateful day i.e., on 19.04.2019, at about 02.00 a.m., the petitioner came to the house, picked up a quarrel with PW1 and also brandished knife. PW3, the grandmother of the victim girl had thrown chilli powder on the face of the petitioner and chased him out. Thus, there was animosity between the petitioner and PW1 to PW4 which the trial Court failed to consider.

4.The learned Additional Public Prosecutor appearing for the respondent Police submitted that the defacto complainant/PW1 is the mother of the victim girl who was aged about 17 years at the time of occurrence. The victim girl used to sleep in her grandmother/PW3's house. On 18.03.2019 when the victim girl was sleeping in the ground floor i.e., her grandmother/PW3's house, the petitioner came to the house, rub her body, kissed and had sexual assault with her and escaped. On the complaint (Ex.P1), an FIR (Ex.P5) in Crime No.13 of 2019 registered for offence under Sections 7 and 8 of the Protection of Children from Sexual Offence Act, 2012 on 21.05.2019. Thereafter, the



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respondent Police took up the investigation, visited the scene of occurrence, prepared Observation Mahazar (Ex.P6), Rough Sketch (Ex.P7) in presence of witnesses, recorded their statements. Then the petitioner was arrested and remanded to judicial custody. After completion of investigation, charge sheet filed before the trial Court. During trial, on the side of the prosecution 14 witnesses examined as PW1 to PW14 and 8 documents marked as Exs.P1 to P8. On the side of the defence, 3 witnesses examined as DW1 to DW3 and 5 documents marked as Exs.D1 to D5. On the evidence of the prosecution witnesses supported by the documents, the trial Court convicted the petitioner as stated above. Hence, prays for dismissal.

5.Considering the submissions and on perusal of the materials, it is seen that prior to the occurrence, there was continuous fight between the petitioner and the defacto complainant. The victim girl/PW2 stated that her mother/PW1 and the petitioner used to pick up quarrel and have fight. Further, she gave different version that on the fateful day i.e., on 19.04.2019, at about 02.00 a.m., the petitioner came to the house, picked up a quarrel with PW1 and also brandished knife. PW3, the grandmother of the victim girl had thrown chilli powder on the face of the petitioner and chased him out. These facts were not



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considered by the trial Court. Hence, the conviction of the petitioner to be reconsidered.

6. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and he is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.5,000/- (Rupees Five 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 on the first working day of every English Calendar month at 10.30 a.m. until the disposal of the criminal 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.



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8.Accordingly, this Miscellaneous Petition is ordered.

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Index: Yes/No

Internet: Yes

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To

- 1.The Sessions Judge,
Mahila Neethimandram, Perambalur.
- 2.The Inspector of Police,
All Women Police Station,
Perambalur.
- 3.The Central Prison,
Trichirapalli.
- 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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