



*Crl.M.P.No.3756 of 2024
in Crl.A.No.262 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2024

CORAM:

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

Crl.M.P.No.3756 of 2024
in
Crl.A.No.262 of 2024

Manoj

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Thanipadi Police Station,
Tiruvannamalai District.
[Crime No.954 of 2020]

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence passed in Spl.S.C.No.106 of 2020 on the file of the Special Court [POCSO Act Cases] Sessions Judge, Tiruvannamalai, Tiruvannamalai District and enlarge the petitioner on bail pending disposal of the aforesaid appeal.

For Petitioner : Mr.S.Silambuselvan

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

ORDER



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This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Sessions Judge, Special Court [POCSO Act Cases], Tiruvannamalai, Tiruvannamalai District by judgment dated 29.12.2023 made in Spl.S.C.No.106 of 2020 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused was convicted by the Trial Court in Spl.S.C.No.106 of 2020 and sentenced to undergo twenty years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo two years simple imprisonment for the offences under Section 376(2)(n) of IPC and Section 5(l), 5(j)(ii) r/w. 6 of POCSO Act, 2012. Against which, the present appeal is filed along with suspension of sentence.

3.The gist of the case is that PW1/paternal grandmother of the victim girl lodged a complaint/Ex.P1 to PW15/Sub-Inspector of Police, who received the complaint and registered FIR/Ex.P14. The complaint is that the



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victim girl's father passed away 10 years back and her mother was infected with disease and she was residing in her parents house. The victim girl and her sister were residing along with PW1. The accused, who is also from the same area and the victim girl were in love with each other which was known to everyone. The victim girl was studying 9th Standard and they had physical relationship. One day, the accused, victim and PW1 were fighting with each other, at that time, the victim informed that she had missed her menstruation period and the petitioner is the reason for it. Thereafter, colony panchayat was held and at that time, the petitioner denied that he is the reason for pregnancy. Hence, complaint was lodged. The victim was sent to PW17/Dr, who issued Accident Register/Ex.P19 and thereafter, referred to Gynaecologist. PW14 is the Doctor who examined the victim and confirmed that the victim was pregnant. Thereafter, the victim was produced before the Magistrate, 164 statement/Ex.P2 recorded, the accused was arrested in the presence of PW8 and PW9 and confession statement recorded. Aadhaar card of the accused, passport size photographs of the victim girl were seized, Ex.P3 to Ex.P6 are the admitted portion of the mahazar and the signature found in the seizure mahazar. PW3 is the



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neighbour of PW1 and PW2, PW4 is the neighbour of the accused and his evidence is in the nature of hearsay. PW5 is the brother of the victim girl's father, who is said to have informed by PW7, a neighbour about the accused visiting the victim house often. PW6 is the another witness of the locality who had seen the petitioner coming to the victim house. PW10 and PW11 are the witnesses to the observation mahazar, who admitted the signature but not the contents in the mahazar. PW12 is the Headmaster who gave the school certificates of the victim and the accused which are marked as Ex.P9 and Ex.P10. PW13 is the Doctor who examined the accused and the victim giving potency certificate for the accused and age certificate of the victim. PW16 is the Inspector of Police who took up investigation, prepared observation mahazar/Ex.P15 and rough sketch/Ex.P16, mahazar for seizure of Aadhaar Card and Form 95, Ex.P17 and Ex.P18. PW16 further collected blood samples for DNA profiling of the petitioner/accused to confirm the DNA of the foetus. PW18 is the subsequent Investigating Officer who took up investigation, filed alteration report/Ex.P20 and DNA report/Ex.P21. On conclusion of investigation, charge sheet filed. Before the Trial Court PW1 to PW18 examined, Ex.P1 to Ex.P21 and M.O.1 to M.O.3 marked on the



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side of the prosecution. On the side of the defence, no witness examined and no documents marked. During trial, PW1 and PW2 disowned their earlier statement and not supported the case of the prosecution. But based on the earlier statement, 164 statement/Ex.P2 and DNA report/Ex.P21, the Trial Court convicted the petitioner. Against which, the present appeal filed along with suspension of sentence.

4.The contention of the learned counsel for the petitioner is that the petitioner and the victim girl were in love with each other is not denied. He would submit that the petitioner and the victim girl hail from the same social background and financial status, their love relationship is known to both the families and there is no objection. During the relationship, due to the adolescent age, not knowing the seriousness and consequences, they had physical relationship and due to which, the victim became pregnant and when the victim asked for marriage, since the petitioner was not settled, he sought time for marriage and there was some dispute. Hence, he also denied that he is the the reason for pregnancy, for which complaint was lodged and now he is in gallows. He would submit that PW1/paternal grandmother of



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the victim girl, aged about 75 years clearly stated that she is not aware about what is written in the complaint and only her left thumb impression was obtained. She went to the Police Station to resolve the issue and not to prosecute the petitioner. PW15/Sub-Inspector of Police admits that the complaint was with a delay of four months and there is no details in the complaint. PW12/Head master who issued Ex.P9 and Ex.P10 admits that age recorded in the school certificate is without any birth certificate and it was only an approximate recording for the purpose of admission eligibility. He further submits that the parents of the petitioner and the victim are uneducated and the date of birth is recorded in the school certificate is an approximate age and not the correct age. Further, PW12 admits that the petitioner not studied in the school and issuance of Ex.P10 is only on compulsion and not based on any records. In such circumstances, EX.P9 and Ex.P10 cannot be considered as a age certificate and the age of the victim and the petitioner not proved conclusively. PW13/Doctor who issued Ex.P12/age certificate of the victim admits that this age certificate is not based on any x-ray and he admits that no ossification test conducted. Hence, this certificate cannot be taken as a proof. In this case, the Trial



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Court had merely gone on Ex.P2/164 statement and DNA report/Ex.P21.

When the victim/PW2 had disowned her earlier statement, it is for the prosecution to examine the Magistrate who recorded 164 statement to prove the same but it had not done so. In view of the same, Ex.P2 has got no relevance and significance. The DNA report/Ex.P21 ought to have been marked through the Scientific Officer who conducted DNA profiling but in this case no such witness examined and Ex.P21 marked through PW16/Investigating Officer. Thus, the prosecution failed to prove the case. But the Trial Court on assumption and presumption had convicted the petitioner. He further submitted that as per Ex.P9/School Certificate, the date of birth of the victim is 21.05.2006 and she is short of two months to attain majority and once she attains majority, the marriage between the petitioner and the victim girl would be conducted, for which the petitioner and the victim girl were agreeable as well as their parents. Further, it is common in their community that marriage within their community would be performed even before they attain majority. Both the petitioner and the victim girl belong to Scheduled Caste Arunthathiyar community, the depressed of the depressed community, which cannot be lost sight of.



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5.The learned Additional Public Prosecutor submits that on the complaint of PW1/paternal grandmother of the victim girl/PW2, case was registered. The victim girl was produced before the Doctor for medical examination, who confirmed that the victim girl was pregnant. She was also produced before the Magistrate and 164 statement recorded confirming that the petitioner is the reason for her pregnancy. After obtaining order from the Court, her pregnancy was terminated by PW14, who had given a medical report/Ex.P13. The victim's grandmother and her family members confirmed that the petitioner is the reason for her pregnancy which has been confirmed by the medical report. PW3 to PW7 are the neighbours and family members of the victim who confirmed that the petitioner used to visit the victim house often and about the love relationship between them. PW8 and PW9 are the witnesses to the arrest and confession. Based on the confession statement, recovery was made. PW10 and PW11 are the witnesses for the observation mahazar and rough sketch. PW12 is the Headmaster who issued school certificate confirming the age of the victim, whose date of birth is 21.05.2006 and she is a minor. PW13, PW14 and



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PW17 are the Doctors who examined the victim girl and given medical reports, Ex.P12, Ex.P13 and Ex.P19. On the complaint of PW1, PW15 registered Fir and thereafter, PW16 took up investigation and PW18 took up further investigation. On completion of investigation, charge sheet file. PW18 marked alteration report and DNA report which confirms that the petitioner is the reason for victim's pregnancy. Though PW1 and PW2 made a turn around during the cross examination, the medical reports are otherwise. Hence, the Trial Court convicted the petitioner. He fairly submitted that the marriage proposal between the petitioner's family and the victim's family have been accepted and both the families agreed that after the victim girl attains majority, marriage would be performed between them and there is no serious objection for their marriage.

6.Today [28.03.2024], the mother of the victim girl Mrs.Kasthuri and the mother of the petitioner Mrs.Lakshmi appeared before this Court, who confirmed that immediately after victim girl attains majority, i.e. after 21.05.2024, marriage between the petitioner and the victim girl would be performed and both the families are agreeable for the marriage. The victim



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girl who is present before this Court was in tears stating that on the ill advice and on an emotional breakout, initially complaint was lodged and now she is repenting not interested to pursue the case against the petitioner. She further submitted that by further detaining the petitioner would cause more harm than doing real justice. Had the victim attained majority and marriage performed between them, even after the conviction in POSCO cases, this Court could have granted relief by allowing the appeal following the Hon'ble Apex Court in ***K.Dhandapani vs. State by the Inspector of Police*** reported in ***2022 SCC Online SC 1056*** and ***Elumalai vs. Inspector of Police, All Women Police Station, Vellore District, Tamil Nadu [Crl.A.No.674 of 2018 dated 03.05.2018]*** wherein the Apex Court taking into consideration the subsequent events, observed that the Courts cannot shut its eyes to the ground reality and disturb the happy family life of the appellant as well as the victim girl even in POCSO cases. The victim to attain majority only on 21.05.2024. In view of the same, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.

7. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner is



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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 trial Court.

8.Further, the petitioner shall appear before the Trial Court on the first working day once in three months at 10.30 a.m. 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 Miscellaneous Petition is ordered.

28.03.2024

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Note: Issue order copy on 01.04.2024



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M. NIRMAL KUMAR, J.

cse

To

- 1.The Inspector of Police,
Thanipadi Police Station,
Tiruvannamalai District.
- 2.The Sessions Judge,
Special Court [POCSO Act Cases],
Tiruvannamalai.
- 3.The The Superintendent,
Central Prison, Vellore.
- 4.The Public Prosecutor,
High Court, Madras.

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