



Crl.M.P.No.5373 of 2024 in Crl.A.No.350 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.09.2024
PRONOUNCED ON : 4.10.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.5373 of 2024
in Crl.A.No.350 of 2024

Prakash,
S/o.Karuppusamy

... Petitioner

Vs.

The State Represented by,
The Inspector of Police,
All Women Police Station,
Dharapuram.
(Cr.No.02/2018).

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C, to suspend the sentence of imprisonment imposed in the judgment dated 11.11.2021 made in Spl.S.C.No.11 of 2019 on the file of the learned Mahila Court, Tiruppur and enlarge the petitioner on bail pending disposal of the above criminal appeal on the file of this Court.

For Petitioner : Mr.N.Manoharan for Mr.R.Kannan

For Respondent : Mr.R.Vinothraja,
Government Advocate (Crl. Side)



ORDER

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This criminal miscellaneous petition has been filed to suspend the sentence of imprisonment imposed against the petitioner by the learned Sessions Judge, Mahila Court, Tiruppur *vide* judgment, dated 11.11.2021 in Special S.C.No.11 of 2019.

2.The conviction and sentenced imposed on the petitioner are as follows:

- For offence under Section 5(l) r/w 6 of the Protection of Children from Sexual Offences Act, 2012, the petitioner is sentenced to undergo twenty years Rigorous Imprisonment and to pay a fine of Rs.10,000/- in default to undergo six months Rigorous Imprisonment.
- For offence under Section 5(j)(ii) r/w 6 of the Protection of Children from Sexual Offences Act, 2012, the petitioner is sentenced to undergo twenty years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo six months Rigorous Imprisonment.
- For offence under Section 506(ii) IPC, the petitioner is sentenced to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months Rigorous Imprisonment.



3.The learned counsel for the petitioner submitted that the victim girl (PW1) is the complainant in this case, in the complaint (Ex.P1), dated 03.03.2018, she mentions only A1 and A2 and the petitioner/A3's name not found in the complaint (Ex.P1) as well as in FIR (Ex.P18). The victim girl (PW1) stated that she was in love relationship with A1/Manoj Kumar for more than four years and she used to talk to him over mobile phone and used to meet him in an isolated place. At that time, A1 said to have committed penetrative sexual assault on the victim girl (PW1). The learned counsel further submitted that the victim girl (PW1) used to talk to A1 through her father's (PW2) mobile phone or through the mobile phone of A2/Mosess. On coming to know about the relationship including physical relationship of the victim girl (PW1) with A1, A2 threatened the victim girl (PW1) that he would disclose the same to her father (PW2) and A2 committed penetrative sexual assault on two or three occasions. The victim girl (PW1) was found sick and her Aunt took her to the Government Hospital where she was found six months pregnant. This examination was on 03.03.2018. Thereafter, the respondent Police was informed about the incident, FIR (Ex.P18) registered and investigation proceeded. The victim



girl (PW1) delivered a male baby on 29.06.2018. A1 and A2 arrested on 03.03.2018 in presence of PW6 and their confession statements recorded.

Thereafter, DNA Test conducted on the male baby in reference to A1 and A2. Since the DNA Report (Ex.P21) of A1 and A2 not matched with the male baby, the victim girl (PW1) was examined again. At that time, the victim girl (PW1) disclosed the petitioner committing penetrative sexual assault. On such disclosure, the petitioner was arrested on 02.01.2019.

4.The learned counsel further submitted that in this case, totally eleven witnesses examined as PW1 to PW11, of which PW1 is the victim girl, PW2 is her father and PW4 is her brother. All the witnesses clearly stated that in the complaint (Ex.P1) and FIR (Ex.P18), the petitioner's name not found and initially, the victim girl (PW1) not stated about the petitioner. PW3, Casualty Doctor examined the victim girl (PW1) on 03.03.2018, in her report recorded that the victim girl (PW1) disclosed only about A1 and A2 and nothing about the petitioner. PW7 produced the birth certificate (Ex.P3) of the victim girl (PW1). PW8, Doctor examined A1 and A2 and gave potency certificates (Exs.P14 & P15). PW9 examined the petitioner



and gave potency certificate (Ex.P16). PW10 confirmed that on 29.06.2018, the victim girl (PW1) came to the hospital and delivered a male baby. PW11, Investigating Officer stated that on 03.03.2018, Mr.Shanmugavadivu, Sub Inspector of Police received the complaint (Ex.P1), registered FIR (Ex.P18) and thereafter she took up investigation. From the evidence of these witnesses, it is clear that initially, the petitioner named the petitioner and the entire case proceeded only against A1 and A2.

5.He further submitted that since the DNA Report (Ex.P21) not confirmed with the paternity of A1 and A2 with the male baby of the victim girl, the petitioner's name disclosed and case proceeded against him. In this case, the Trial Court failed to look into the other attendant circumstances of the case but convicted the petitioner merely based on the DNA Report (Ex.P26). In this case, there is nothing on record to show when FTA Cards collected from the Forensic Centre, who collected the blood stains and how it was preserved and sent for forensic examination. In this case, the Forensic Report prepared by one Ms.N.Mahalakshmi and Ms.Thilaga. Both the Forensic Experts not examined and the Forensic Report marked through



the Investigating Officer. Hence, it cannot be stated that the DNA Report (Ex.P26) proved in the manner known to law. Except the DNA Report (Ex.P26), the other evidences are in favour of the petitioner. The specific case of the victim girl before the Police, statement under Section 161 Cr.P.C and in evidence, it was A1 and A2 with whom she had physical relationship. In such circumstances, relying on the DNA Report (Ex.P26) of the petitioner and convicting the petitioner is not proper. Hence, he prays for suspension of sentence. In support of his submissions, the learned counsel for the petitioner relied on the decision of the Bombay High Court in the case of “*Suresh v. The State of Maharashtra* reported in *MANU/MH/0997/2023*”

6.The learned Government Advocate (Crl. Side) appearing for the respondent Police filed counter and submitted that the victim girl was 17 years old at the time of occurrence. The victim girl (PW1) had love relationship with A1 and she used to talk to him through mobile phone of her father (PW2) and through the mobile phone of A2. A2 on coming to know about the love affair between the victim girl (PW1) and A1, he



threatened her and committed penetrative sexual assault on her. Initially, the victim girl (PW1) not disclosed about the petitioner to her father (PW2) and Aunt due to fear. Since the petitioner is the friend of A1, the victim girl (PW1) requested the petitioner to help her in joining with A1. On the guise of helping the victim girl (PW1), the petitioner asked the victim girl to come to an isolated place and he committed penetrative sexual assault. The victim girl (PW1) clearly stated that due to threat of the petitioner, she did not disclose the petitioner's name at the initial stage. He further submitted that PW3, Doctor examined the victim girl at the initial stage and found she was pregnant and recorded the same in the Accident Register (Ex.P4). PW10, Doctor conducted delivery of the victim girl, confirmed the male baby born and issued the medical report (Ex.P17). PW8 and PW9 are the Doctors who examined A1 to A3 and issued potency certificates (Exs.P14 to P16). The victim girl (PW1), her father (PW2) and her brother (PW4) stated about the victim girl was a minor and she was subjected to penetrative sexual assault. Since the DNA Report (Ex.P21) not confirmed the paternity of the male baby with A1 and A2, they were acquitted from the charges. As regards the petitioner is concerned, the DNA Report (Ex.P26) confirms the paternity of



the male baby of the victim girl with the petitioner. Based on which, the Trial Court convicted the petitioner. Hence, strongly opposed for suspension of sentence.

7.Considering the submissions and on perusal of the materials, it is seen that in this case, the victim girl (PW1) lodged the complaint (Ex.P1), based on which, FIR (Ex.P18) registered against A1 and A2. Admittedly, the victim girl (PW1) not disclosed about the petitioner/A3 in the complaint (Ex.P1) and during the initial investigation. PW2 and PW4, the father and brother of the victim girl came to know about the incident only through the victim girl. Since the victim girl (PW1) not disclosed about the petitioner to PW2 and PW4, they also not stated against the petitioner. PW3, Doctor examined the victim girl on 03.03.2018 and recorded in the Accident Register (Ex.P4) confirming the victim girl was subjected to the penetrative sexual assault by two persons namely A1 and A2. The DNA Report (Ex.P21) ruled out the paternity of A1 and A2 with the male baby born to the victim girl. Thereafter, the victim girl was again enquired and the role of the petitioner disclosed. The evidence of the victim girl is that she had



physical relationship with A1 on several occasions and with A2 on two or three occasions and with the petitioner on two occasions. The Trial Court acquitted A1 and A2 from all charges since the DNA Report (Ex.P21) excluded A1 and A2 from the paternity. The paternity of the male baby is confirmed with the petitioner based on the DNA Report (Ex.P26) is not proper since how and when the blood samples taken and collected in the blood card and how it was preserved and sent for forensic examination, there is no evidence. In this case, the DNA profiling methodology not proved in the manner known to law. In the DNA Test, the collection and preservation of evidence is an important factor which ought to be properly documented. If DNA evidence is not properly documented, collected, packaged, and preserved, it will not meet the legal and scientific requirements for admissibility in a court of law. Added to it, when the ocular evidence was not supporting, conviction ought not to have been based only on the DNA Test report *i.e.*, medical report.

8.It is also seen that the Forensic Expert who conducted the DNA Test not examined. The DNA Reports (Exs.P21 & P26) marked through the



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Investigating Officer. In such circumstances, it cannot be stated Exs.P21 & P26 proved in the manner known to law and Exs.P26 cannot be a sole basis for convicting the petitioner. Hence, the conviction of the petitioner needs reconsideration.

9. In view of the above, 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.10,000/- (Rupees ten thousand only) with two sureties, each for a like sum to the satisfaction of the Trial Court.

10. Further, the petitioner shall appear before the Trial Court once in three months commencing from the first working day of November 2024 at 10.30 a.m till the disposal of the criminal appeal. Accordingly, this Miscellaneous Petition is ordered.

4.10.2024

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To

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



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN
CrI.M.P.No.5373 of 2024
in CrI.A.No.350 of 2024

4.10.2024