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Crl.M.P.No.7438 of 2024
in Crl.A.No.445 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2024

CORAM:

**THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

Crl.M.P.No.7438 of 2024
in Crl.A.No.445 of 2019

R.Krishnamoorthy

... Petitioner/Appellant

Vs.

The State Represented by
The Inspector of Police,
Vennandur Police Station,
Namakkal District.
Crime No.282 of 2016

...Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (1) of the Criminal Procedure Code, seeking to suspend the sentence of imprisonment imposed in the judgment dated 06.03.2019 in S.C.No.24 of 2017 on the file of the learned Sessions (Fast Track Mahila) Judge, Namakkal and enlarge the petitioner on bail.

For Petitioner : Mr.I.Sheik Mohamed
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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ORDER

*(Order of the Court was delivered by **SUNDER MOHAN, J.**)*

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner/first accused by the learned Sessions (Fast Track Mahila) Judge, Namakkal on 06.03.2019 in S.C.No.24 of 2017 and enlarge him on bail.

2. The learned Sessions (Fast Track Mahila) Judge, Namakkal, in S.C.No.24 of 2017, has convicted the petitioner/first accused and sentenced him as follows:-

<i>Accused</i>	<i>Offence</i>	<i>Sentence imposed</i>
A1	Section 449 of IPC	7 years RI along with fine of Rs.2,000/- in default three more months RI;
	Section 376(2)(g) of IPC	Life imprisonment along with fine of Rs.2,000/- in default three more months RI
	Section 302 of IPC	Life imprisonment along with fine of Rs.2,000/- in default three more months RI
Sentence were ordered to run concurrently		

3. Challenging the above conviction and sentence, the petitioner/first



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accused, has filed the above Criminal Appeal and he seeks suspension of sentence and bail in the present miscellaneous petition.

4. Heard Mr.I.Sheik Mohamed learned counsel appearing for the petitioner and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, appearing for the respondent/Police.

5. It is the case of the prosecution that the petitioner/A1 was regularly having sexual relationship with the deceased, who was aged about 70 years at the time of occurrence; that on the date of occurrence i.e. on 20.09.2016, the petitioner and A2 consumed liquor, trespassed the house of the deceased, committed rape and caused multiple injuries to the deceased including her private parts and the deceased succumbed to injuries.

6. The learned counsel for the petitioner submitted that the case is based on circumstantial evidence and none of the circumstances have been established by the prosecution conclusively; that the petitioner is said to have given an extra-judicial confession which is neither truthful nor voluntary. He further submitted that A2 has been enlarged on bail by this



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Court in Crl.M.P.No.1509 of 2024 in Crl.A.No.12 of 2021 on 08.02.2024; and that the petitioner herein/A1 is in custody from 06.03.2019. Hence, he prayed for suspension of sentence.

7. The learned Additional Public Prosecutor for the respondent/Police submitted that the trial Court had considered all the circumstances and convicted the petitioner/A1, there is no infirmity in the same and opposing the petition for suspension of sentence.

8. We have perused the records carefully and considered the rival submissions.

9. We find from the records that the deceased was alive when she was first examined by the Doctor. The deceased stated to the Doctor that she was raped by one unknown person. P.W.1, who is the relative of the deceased is the complainant and as per his complaint, he came to know through P.W.4 who first saw the deceased in the house that the deceased was lying unconscious. P.W.4 did not tell P.W.1 about the conversation she allegedly had with the deceased before taking her to the hospital. However,



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in her deposition P.W.4 had stated that the deceased told her that two persons were responsible without giving any further details. This version is an improved version besides being vague. We find that the extra-judicial confession is the only other evidence which is not corroborated. Further by the order dated 08.02.2024 in Crl.M.P.No.1509 of 2024 in Crl.A.No.12 of 2021, we had suspended the sentence imposed on A2.

10. Considering the above and the fact that the petitioner/first accused is in custody since 06.03.2019 and that the appeal is not likely to be taken up in the near future, we are inclined to suspend the sentence.

11. Accordingly, this Criminal Miscellaneous Petition stands **allowed** and the sentence imposed on the petitioner/first accused is suspended on the following conditions:-

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two independent sureties, each for a like sum to the satisfaction of the learned Sessions (Fast Track Mahila) Judge, Namakkal;
- (ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court



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may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity;

(iii) The petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m., until the disposal of the appeal and if he is not able to appear before the trial Court on any 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.

(M.S.R, J.)

(S.M, J.)

28.06.2024

Index: Yes/No

dk

Note: Issue Order Copy on 02.07.2024



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To

- 1.The Sessions (Fast Track Mahila) Judge,
Namakkal .
- 2.The Inspector of Police,
Vennandur Police Station,
Namakkal District.
- 3.The Superintendent,
Central Prison,
Salem.
- 4.The Public Prosecutor,
High Court,
Madras.



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and
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