



Crl.M.P.No.8385 of 2024
in
Crl.A.No.738 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 4/12/2024

C O R A M

THE HONOURABLE Mr.JUSTICE SUNDER MOHAN

Crl.M.P.No.8385 of 2024

in

Crl.A.No.738 of 2024

Bhuvaneshwaran @ Bhuvanesh ... Petitioner

Vs

State

rep. By The Inspector of Police

Gobichettipalayam All Women Police Station

Gobichettipalayam

Erode District.

...

Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 397 (1) r/w. 439 of Cr.P.C., to suspend the sentence of imprisonment imposed in the judgment dated 18/12/2023 made in Spl.S.C.No.81 of 2021 on the file of the Court of Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode and enlarge the petitioner on bail, pending disposal of Criminal Appeal.

For Petitioner : Mr.J.Ranjith Kumar
For Respondent : Dr.C.E.Pratap
Government Advocate (Crl. Side)

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ORDER

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This Criminal Miscellaneous Petition has been filed to suspend the sentence of imprisonment imposed in the judgment dated 18/12/2023 made in Spl.S.C.No.81 of 2021 on the file of the Court of Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode and enlarge the petitioner on bail, pending disposal of Criminal Appeal.

2. It is the case of the prosecution that the victim is the second daughter of the defacto complainant; that the petitioner has married the first daughter of the defacto complainant; that since the defacto complainant suffered from a mental illness, the victim was admitted to a Home run by one Sam; that on 21/3/2019, when the victim went to the mother's place for holiday and returned to Home on 27/5/2019, the hostel warden found that the victim had missed her monthly menstrual cycle; that later, it was found that she was pregnant; and that on the complaint given by the mother, a case was registered under Sections 5 (1), 5 (n), 5 (m), 5 (j) (ii) punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012. The trial Court, after considering the evidence on record convicted the



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petitioner under Sections 5 (1), 5 (n), 5 (m), 5 (j) (ii) punishable under Section 6 of Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo 20 years rigorous imprisonment and to pay a fine of Rs.5,000/- in default three months simple imprisonment.

3. The learned counsel appearing for the petitioner would submit that the victim in her 164 Cr.P.C., statement had not accused the petitioner; that the defacto complainant turned hostile; that the victim had delivered a child which was given in adoption and that no DNA examination was conducted to prove the paternity of the child born to the victim and that the petitioner is in custody from 18/12/2023, and prayed for suspension of sentence.

4. The learned Government Advocate (Criminal Side) has filed counter and submitted that victim had supported the case of the prosecution and therefore, there is no infirmity in the judgment of the trial Court and no ground has been made out for suspension of sentence.



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5. On a perusal on record, it is seen that the prosecution had not established the age of the victim by producing any certificate, however, ossification test conducted by the Doctor would show that victim could be between 17 and 19 years; P.W.2 the defacto complainant turned hostile. The victim had not accused the petitioner in her Statement under Section 164 of the Code of Criminal Procedure. The victim had not complained of the alleged offence to any person, until the care taker of the home found that the victim was pregnant.

6. Considering the above, the fact that the petitioner has raised substantial grounds in the appeal that appeal is not likely to be taken in near future, and the petitioner is in incarceration from 18/12/2023, this Court is inclined to grant the relief of suspension of sentence.

7. Accordingly, this Criminal Miscellaneous Petition stands allowed and the sentence imposed on the petitioner, is suspended till the disposal of the Criminal Appeal and he is ordered to be released on bail on the following conditions:



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(i)The petitioner 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 Court of Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode;

(ii)The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Trial Court 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 further orders 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.

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mvs.

Index: Yes/No
Neutral Citation: Yes/No

SUNDER MOHAN, J



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mvs.

To

1. The Sessions Judge,
Magalir Neethi Mandram (Fast Track Mahila Court),
Erode
2. The Inspector of Police
Gobichettipalayam All Women Police Station
Gobichettipalayam
Erode District.
3. The Superintendent, Central Prison, Coimbatore.
4. The Public Prosecutor,
Madras High Court.

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