



Crl.M.P.No.9022 of 2023 in Crl.A.No.684 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2024

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.9022 of 2023
in Crl.A.No.684 of 2023

Rajkumar

... Petitioner

Vs.

1.State, Rep. by

The Deputy Superintendent of Police,
Devala Sub-Division, Devala Police Station,
The Nilgiris District. (Crime No.578/2017).

2.The Inspector of Police,

Devala Police Station,
The Nilgiris District.
(Crime No.578/2017).

3.Sundaralingam

... Respondents

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C., to suspend the sentence of imprisonment, passed in S.C.No.42 of 2018 on the file of the learned Special Court of SC/ST Act (Sessions Court) of the Nilgiris District at Udthagamandalam) and enlarge him on bail, pending disposal of C.A.No.684 of 2023 filed before this Court.

For Petitioner	:	Mrs.Jayasri Baskar
For R1 & R2	:	Mr.R.Kishore Kumar, Government Advocate (Crl. Side)
For R3	:	Ms.T.S.Sudha Gandhi



ORDER

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This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in judgment, dated 31.03.2023 in S.C.No.42 of 2018 passed by the learned Special Judge, Special Court for SC/ST (POA) Act (Sessions Court) of the Nilgiris District at Udhagamandalam.

2.The conviction and sentence imposed against the petitioner is as follows:

- For offence under Section 365 of the IPC, the petitioner to undergo Rigorous Imprisonment for five years and to pay a fine of Rs.10,000/- in default to undergo Simple Imprisonment for one year.
- For offence under Section 3(2)(va) of SC/ST (POA) Act, the petitioner to undergo five years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo Simple Imprisonment for one year.
- For offence under Section 305 of IPC, the petitioner to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo Simple Imprisonment for one year. All the sentences were ordered to run concurrently.

3.The learned counsel for the petitioner submitted that the petitioner



and the deceased were in love with each other for the past five to six years.

The deceased aged about 17 years 6 months and the petitioner aged about 29 years at the time of occurrence. Both decided to marry. The petitioner and his family members not objected of their marriage, but the parents of the deceased (PW1 & PW2) opposed the marriage. Despite taking best efforts by the deceased to convince her parents, she was unable to do so. Finally, the deceased and the petitioner decided that they would end their life. Both consumed Furadan 3G Insecticide poison in a remote forest area on 29.11.2017. At about 05.00 a.m., on 22.09.2017, the petitioner regained conscious and found the deceased was unconscious. To save her life, the petitioner informed his friend PW6 about consummation of poison. Thereafter, both were taken to the Government Hospital, Gudalur where the Doctor PW14 declared the deceased dead and the petitioner was admitted in serious condition and the petitioner could be saved. During treatment, PW9 Doctor summoned the Judicial Magistrate, Udhagamandalam to record the petitioner's dying declaration since he was in a critical situation. But the petitioner survived. She further submitted that PW3 and PW4 are the relatives of the deceased who stated about the objection of PW1 and PW2



for having love relationship with the petitioner. PW4 is the person who is said to have spoken about the last seen theory seeing the petitioner travelling in the auto of PW7, but PW7 not supported the case of the prosecution. In this case, from the evidence of PW6, PW9 and PW14 Doctors, it is seen that both the petitioner and the deceased consumed poison, but unfortunately the deceased died, the petitioner survived. Hence, the conviction of the petitioner is not sustainable.

4.The learned Government Advocate (Crl. Side) appearing for the respondents 1 and 2 submitted that on 21.09.2017, at about 09.15 hours, the 3rd respondent lodged a complaint before the 2nd respondent Police stating that his elder daughter (victim girl) aged about 17 years studying 12th std in the Government School, Gudalur. On 21.09.2017, at morning the deceased went to school, but she did not return to home. Immediately, the 3rd respondent and his family members were searching the deceased at nearby places, but could not find her. On the complaint (Ex.P1), an FIR in Crime No.578 of 2017 (Ex.P18) registered. During the course of investigation, some village people were found the victim girl who was died and



Rajkumar/petitioner who was unconscious stage at Nadukani Plantation Estate and the same was informed to the 2nd respondent Police. The 2nd respondent Police rushed to the said place and saw the deceased body and conducted inquest on the body of the deceased and sent the body for postmortem to Government Hospital, Gudalur. The petitioner was admitted at the said hospital for treatment. Thereafter, the 2nd respondent Police altered the Section to 366(A) of IPC r/w 174 Cr.P.C. On further investigation, it came to light that the deceased, a scheduled caste community had love affair with the petitioner, who is a backward class community. Since the deceased parents were not accepted the same, both the petitioner and the deceased consumed poison. Thereafter, Sections altered to 365, 305 of IPC r/w 3(2)(va) of SC/ST Act (POA) Amendment Act, 2015 and the investigation handed over to the 1st respondent Police. On further investigation, the 1st respondent Police collected the community certificates of the petitioner and the deceased (Exs.P9 & P12), postmortem certificate of the deceased (Ex.P13) and filed the charge sheet before the trial Court. During trial, on the side of the prosecution, seventeen witnesses examined as PW1 to PW17 and thirty one documents marked as Exs.P1 to



P31 and ten material objects marked as MO1 to MO10. On the side of the defence, no witness examined and no document marked. The trial Court on conclusion of trial, convicted the petitioner as stated above. Hence, prays for dismissal of the suspension of sentence.

5.The learned counsel for the 3rd respondent submitted that the 3rd respondent is the father of the deceased and the deceased was a minor aged about 17 years, 6 months. The petitioner aged about 25 years. Taking advantage of her age and innocence of the deceased, the petitioner developed a love relationship which was objected by the petitioner's parents which is normal. Though the petitioner and the deceased consumed poison, the petitioner after gaining conscious called his friend PW6 his friend to save himself and not the deceased which would clearly show that the petitioner was conscious about his survival and left the deceased succumbed to death. The petitioner in Ex.P8 states about the reason for both the petitioner and the deceased consuming poison, but taken the same as defence as though the deceased consumed poison which was informed to the petitioner, thereafter, the petitioner had gone there and saved her and



later, he also consumed poison. Thus, the conduct of the petitioner would expose his criminality. Hence, strongly opposed this petition.

6.Considering the submissions made and on perusal of the materials, it is seen that the petitioner and the deceased were in love for more than five years and both of them were inclined to marry. Even the petitioner's parents accepted the love proposal and marriage but it was the victim's parents who opposed the same and the victim was pushed to take the extreme step. Due to the opposition from the victim's parents and the bondage of love between them was so thick, they were unable to face the opposition and decided to end their life, both of them consumed poison. The evidence of P.W.6/friend and P.W.14/Doctor confirms that the petitioner could be saved due to sustained treatment. Further, it is seen that the petitioner was admitted in such a condition that he was likely to die and hence, dying declaration was also recorded by the Magistrate and thereafter, he was saved. In view of the above, the petitioner cannot be solely blamed for the death of the deceased. Finding that there are arguable points in the appeal, this Court is inclined to suspend the sentence of the petitioner till the



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

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.

8.Accordingly, this Miscellaneous Petition is ordered.

29.02.2024

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- 1.The Special Judge,
Special Court for SC/ST (POA) Act
(Sessions Court) of the Nilgiris District at Udhagamandalam.
- 2.The Deputy Superintendent of Police,
Devala Sub-Division, Devala Police Station,
The Nilgiris District.
- 3.The Inspector of Police,
Devala Police Station,
The Nilgiris District.
- 4.The Superintendent of Prison,
Central Prison, Coimbatore.
- 5.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR., J.

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