



Crl.M.P.No.10741 of 2024 in Crl.A.No.975 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No. 10741 of 2024

in

Crl.A.No. 975 of 2024

Eswaran

... Petitioner

Vs.

State represented by
The Inspector of Police,
Bhavani All Women Police Station,
Bhavani, Erode.
(Crime No.19/2019)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389 of the Code of Criminal Procedure, to suspend the sentence imposed in Spl.S.C.No. 21 of 2020 by the judgment dated 10.08.2023 passed by the learned Sessions Judge, Magalir Neethi Mandram, Fast Track Mahila Court, Erode and enlarge the petitioner on bail pending disposal of the criminal appeal.

For Petitioner : Mr.R.Vivekananthan

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

ORDER



The petitioner / accused convicted by the Trial Court in Spl.S.C.No.21 of 2020 by judgment dated 10.08.2023 for the offences under Sections 3 & 4 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.3,000/-, in default to undergo 3 months simple imprisonment and for offences under Section 366 of the Indian Penal Code and sentenced to undergo rigorous imprisonment 5 years and to pay a fine of Rs.2,000/-, in default to undergo 3 months simple imprisonment, against which, he filed an appeal in Crl.A.No. 975 of 2024 along with the present petition for suspension of sentence petition.

2. The case of the prosecution is that the victim girl / P.W.2 is aged about 17 years as her date of birth is 13.11.2003. She is working in a Company, in which, the appellant was also working. On 28.09.2019, he abducted and kidnapped the victim girl and taken in a vehicle to Mandya District, Karnataka to the petitioner's sister's house. There they stayed for two days. At that time, the petitioner had tied a Thalee and married the victim girl and they had physical relationship on two occasions. Coming to know the girl's father was in search of her, she had contacted to her father and informed about the marriage. The victim girl's promised to perform the marriage between the appellant and the petitioner. Hence, they returned back to the native on 01.10.2019. Thereafter, the petitioner was arrested and the victim



was sent for medical examination. P.W.9 / Doctor, who examined the victim gave a certificate of opinion marked as Ex.P13 recording no evidence to show that the victim was subjected to penetrative sexual assault. During the trial, P.W.1 to P.W.15 examined and Exs.P1 to P26 marked and on conclusion of the trial, the petitioner was sentenced as stated above.

3. The contention of the petitioner in this case is that the petitioner P.W.2 is the victim girl. She admits that she had voluntarily gone along with the petitioner. Their understanding was that both of them would get married and in fact, on 29.09.2019 & 30.09.2019, when they were staying at Mandya District, the petitioner / appellant had tied a Thalee. Even according to the Doctor / P.W.9, victim girl had stated about the marriage and having physical relationship with the petitioner on two occasions and there was nothing by force. It was due to the love affair and after marrying the victim girl, the incident said to have been taken place. The Doctor, in her evidence had stated that there was no forceful penetrative sexual assault. Thus, looking the evidence of Doctor and evidence of P.W.2, victim girl admits the love affair, marriage and relationship and she was forced to give statement against petitioner. The victim admits that her father is a cooliee and her date of birth certificate has been produced as Ex.P14 issued by P.W.10 / Municipal



Authorities which is not a conclusive proof. The petitioner was given to understand that the victim had attained major and thereafter, only both of them agreed and they left and got married.

4. The learned Government Advocate would submit that from the date of conviction, the petitioner is inside the prison for more than one year. The learned Government Advocate would submit that on a complaint given, a case was registered in Crime No.19 of 2019 for the offence under Section 366 of Indian Penal Code and 4 of the POCSO Act on 01.10.2019. On 03.10.2019, the petitioner was arrested and on 17.10.2019, the victim girl / P.W.2 had given 164 statement. In this case, P.W.1 and P.W.3 / mother and father of the victim confirmed that the victim was abducted and taken away by the petitioner. The Doctor / P.W.9 who examined the Victim confirms the victim was subjected to penetrative sexual assault. He would further submit that P.W.1, P.W.11, P.W.12 & P.W.13 have not supported the case of the prosecution but the other witness have confirmed the case of the prosecution. The Trial Court, on the evidence had rightly convicted the petitioner as stated above. He would submit that the petitioner has not known the case and he is still married and he is now confined in prison for more than one year.



5. Considering the fact and the evidence available, it is seen that both of them agreed for a marriage and she had accompanied the appellant and they stayed in a house. It is seen that she showed no resistance or raised any voice for illegal detention. She admits the marriage between them. On the promise given by father that marriage would be formalised, both of them came back to native. But thereafter, case has been registered and now the petitioner has been convicted. The evidence of P.W.2 confirms the love affair marriage and she has resailed from her earlier statement not supported the case of prosecution. There is nothing to show that there was any forceful abduction relationship by the petitioner. The victim education certificate not produced, victim admits that she had studied upto Class - X1. The birth certificate shows her date of birth on 13.11.2003. This certificate admitted obtained at a later point of time. The victim girl confirmed her relationship and she voluntarily gone with the petitioner.

6. In view of the facts and circumstance of the case, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal, 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.



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7.Further, the petitioner shall appear before the Trial Court at 10.30 a.m., on the first working day of every English Calender month 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 on the same month in lieu of the date of his absence as directed by the Trial Court.

8.Accordingly, this Miscellaneous Petition is ordered.

12.08.2024

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Note: Issue order copy on 13.08.2024.

To

- 1.The Sessions Judge,
Magalir Neethi Mandram,
Fast Track Mahila Court, Erode
- 2.The Inspector of Police,
Bhavani All Women Police Station,
Bhavani, Erode.
- 3.The Central Prison,
Coimbatore.



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4.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

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