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Crl.M.P.No.12195 of 2024 in Crl.A.No.1098 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.12195 of 2024
in Crl.A.No.1098 of 2024

Thimmappa

... Petitioner

Vs.

State by the Inspector of Police,
Denkanikottai Police Station,
Krishnagiri District.
Crime No.129/2019

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 [1] of Cr.P.C. to suspend the sentence imposed against the petitioner in S.C.No.14/2021 on the file of the learned Sessions Judge Fast Track Magalir Neethimandram, Krishnagiri, Krishnagiri District Dated 27.10.2022 and enlarge the petitioner on bail pending disposal of the above appeal.

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

ORDER

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner in S.C.No.14/2021, on the file of the learned Sessions Judge Fast Track Magalir Neethimandram, Krishnagiri, Krishnagiri District, dated 27.10.2022 and enlarge the petitioner on bail pending disposal of the above appeal.



2.The case of the prosecution is that the petitioner had committed rape on the victim, who is a mentally challenged person, eight months prior to the complaint given on 23.05.2019.

3.The petitioner was convicted for the offence under Section 376 (2)(j)(l)(n) IPC and sentenced to undergo rigorous imprisonment for 10 years for the offence under Section 376(2)(j) IPC and to pay a fine of Rs.5000/-, in default to undergo simple imprisonment for six months and convicted for the offence under Section 376(2)(l) IPC and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5000/-, in default to undergo simple imprisonment for 6 months and convicted for the offence under Section 376(2)(n) IPC and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for 6 months and the sentences are ordered to run concurrently.

4.The learned counsel for the petitioner submitted that all the witnesses, namely, the mother, father, village heads and the local persons/PWs 1 to 6, examined to prove the occurrence turned hostile; that the victim was not examined by the prosecution; that the conviction was



passed solely on the DNA report; that the expert, who gave the DNA report was not examined and that in any case, the respondent had not followed the mandatory procedure required for collection of sample to ensure the authenticity of the report and prayed for suspension of sentence.

5.The learned Government Advocate (Crl.Side) filed a counter and submitted that in the DNA report, it is stated that the biological father of the foetus was the petitioner and submitted that the trial Court has rightly convicted the petitioner and opposed the petition. The learned Government Advocate (Crl.Side) on instructions would also submit that the expert, who issued the DNA report was not examined before the trial Court.

6.Admittedly, PWs 1 to 6, the parents and the other relatives of the victim turned hostile. The victim was not examined by the prosecution for the reasons best known to them, though the victim was examined by the police during the investigation with the help of PW8/teacher for deaf and dumb. The conviction is solely based on the DNA report and the expert who had conducted the analysis and issued the report was not



examined. This Court is of the view that the question as to whether the conviction can be recorded only based on the DNA report requires consideration in the above appeal.

7. Therefore, considering the above facts, the period of incarceration and the fact that the appeal is not likely to be taken up in the near future, this Court is inclined to grant the relief of suspension of sentence to the petitioner.

8. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioner is suspended and the petitioner is ordered to be released on bail on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.10,000/- with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Fast Track Magalir Neethimandram, Krishnagiri.
- (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; and
- (iii) The petitioner shall appear before the trial Court on the



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first Monday 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.

08.11.2024

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Issue order copy by .11.2024
Upload the order copy forthwith.

To

- 1.The Sessions Judge,
Fast Track Magalir Neethimandram,
Krishnagiri.
- 2.The Inspector of Police,
Denkanikottai Police Station,
Krishnagiri District.
Crime No.129/2019
3. The Superintendent of Prison,
Central Prison, Vellore.
- 4.The Public Prosecutor,
Madras High Court.

SUNDER MOHAN, J.

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