



Crl.M.P.No.11104 of 2024 in Crl.A.No.1011 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.11104 of 2024
in Crl.A.No.1011 of 2024

Rajasekar,
S/o.Nagarajan

... Petitioner

Vs.

State rep by

1.The Deputy Superintendent of Police,
Gingee Sub Division,
Villupuram District.
(Crime No.13/2023).

2.The Inspector of Police,
All Women Police Station,
Gingee,
Villupuram District.

3.Sevvanthi

... Respondents

PRAYER: Criminal Miscellaneous Petition filed under Section 430(i) of BNSS, to suspend the sentence imposed upon the petitioner in Spl.S.C.No.61/2023 passed by the Sessions Judge, Special Court for exclusive trial of cases registered under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Villupuram, dated 31.05.2024 and enlarge the petitioner on bail, pending disposal of the above criminal appeal.



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For Petitioner : Mr.R.John Sathyan, Senior Counsel for
Mr.M.S.Elamparithi

For R1 & R2 : Mr.R.Vinothraja,
Government Advocate (Crl. Side)

For R3 : Mr.I.Syed Sibghatulla,
Legal Aid Counsel

ORDER

This criminal miscellaneous petition has been filed to suspend the sentence of imprisonment imposed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under SC/ST (POA) Act, Villupuram in Special S.C.No.61 of 2023, dated 31.05.2024.

2.The conviction and sentence imposed on the petitioner in Special S.C.No.61 of 2023 is as follows:

- For offence under Section 448 of IPC, the petitioner is sentenced to undergo Simple Imprisonment for one year.
- For offence under Section 376 r/w 511 of IPC, the petitioner is sentenced to undergo Rigorous Imprisonment for five years and to pay a fine of Rs.5,000/-, in default to undergo Rigorous Imprisonment for one year.
- For offence under Section 307 of IPC, the petitioner is sentenced to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.5,000/-, in default to undergo Rigorous Imprisonment for one year.



- For offence under Section 3(1)(w)(i) of SC/ST (POA) Amendment Act, the petitioner is sentenced to undergo Simple Imprisonment for six months and to pay a fine of Rs.10,000/- in default to undergo Simple Imprisonment for one month.

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3.The learned Senior Counsel appearing for the petitioner submitted that the Trial Court convicted the petitioner on surmises and conjectures without any sustainable legal evidence. In this case, PW1 is the victim girl and PW3/grandmother of PW1 projected as eye witness to the occurrence. The evidence of both witnesses are contradictory to each other and the case projected against the petitioner is highly artificial and improbable. It is projected as though on 01.06.2023, at about 09.00 p.m, when PW1 was alone at home, the petitioner entered the house on the pretext of asking address, pushed the victim girl down, kissed her and attempted to take her to bed. The victim girl resisted the same and raised alarm. At that time, PW3/her grandmother came there and the appellant said to have ran away from the scene and thereafter, complaint (Ex.P1) lodged on the next day with delay. No proper reason given for such delay. The evidence of PW3 is that the petitioner came again to the house to collect his mobile phone, at that time, she identified him and questioned the grandmother of the petitioner thereafter.



The statement under Section 164 Cr.P.C of PW1 is that the appellant again came back and took his bike parked near the house of PW1. Admittedly, neither the mobile phone nor bike seized, produced as material object. The Investigating Officer/PW11 admits that none of the witnesses stated about any intention or act of the petitioner. In such circumstances, convicting the petitioner for attempt to rape is not proper.

4.The learned counsel further submitted that in this case, there is no injury or any threat to life to the victim girl, hence the offence under Section 307 of IPC not made out. With regard to commission of offence under the SC/ST Act, the petitioner's wife belongs to Scheduled Caste community, to prove the same, she examined as DW1 and exhibits marked. PW1, PW2 and PW3 as well as Investigating Officer/PW11 admits that there is no marked difference in the village, all the people belonging to different community lived together and there is no separate area for people belong to scheduled caste community. In such circumstances, it cannot be construed that a person identified a place knowing that such person belongs to scheduled caste community and committed the offence. In this case, there are two versions given by PW2 that initially a complaint was lodged to Ananthapuram Police



Station and thereafter another complaint lodged to the 2nd respondent Police.

What happened to the first complaint is not known. In view of the same, the conviction of the Trial Court needs reconsideration.

5.The learned counsel appearing for the 3rd respondent submitted that the victim girl in a depression mood and she fears for her life if the appellant comes out on bail. In this case, there is no false implication of the petitioner. The victim girl not identified the petitioner, it is her maternal grandmother/PW3 who identified the petitioner when he came to take back his mobile phone. Since PW3 is known to the petitioner's grandmother, she questioned the petitioner's grandmother and there have been heated exchange of words. Thus, the petitioner trespassed into PW1's house and attempted to commit rape is proved from the evidence of PW1 and PW3. Hence, he strongly opposed for suspension of sentence.

6.The learned Government Advocate (Crl. Side) appearing for the respondents 1 and 2 submitted that on the complaint (Ex.P1) of PW1, FIR (Ex.5) registered and investigation conducted. PW2, PW3 and PW4 are the mother, maternal grandmother and father of the victim girl. All the witnesses



corroborated with each other. The victim girl in this case clearly stated how attempted rape by the petitioner. The identification of the petitioner is proved by PW3. The victim girl belongs to Scheduled Caste community is proved by the evidence of PW8 and the Investigating Officer/PW11. On the complaint (Ex.P1), PW11 visited the scene of occurrence, prepared Observation Mahazar (Ex.P7), Rough Sketch (Ex.P8), examined the witnesses present, recorded their statement and on conclusion of investigation, filed the charge sheet before the Trial Court. During trial, on the side of the prosecution, eleven witnesses examined as PW1 to PW11 and nine documents marked as Exs.P1 to P9. On the side of the defence, one witness examined as DW1 and four documents marked as Exs.D1 to D4. On conclusion of trial, the trial Court convicted the petitioner as stated above.

7.This Court considered the rival submissions and perused the materials available on record.

8.In this case, the evidence of PW1 is that when she was residing alone, the petitioner forcibly entered the house and attempted to kiss her and also attempted to take her to the bed. Her further evidence is that



PW3/grandmother came there, heard her cry and identified the petitioner when he came to take back his mobile phone. For second time when he came to take his bike, the petitioner was identified by PW1. In this case, neither the mobile phone nor bike of the petitioner produced as material objects. PW11/Investigating Officer admits that in the statement under Section 164 Cr.P.C of the victim girl, it is recorded as though along with Rajesh there are several others involved in the incident. But this statement under Section 164 Cr.P.C not produced before the Court. The evidence of PW1 and PW3 are contradictory. PW2, the mother of PW1 stated that the complaint was initially lodged to Ananthapuram Police Station. PW3 states that she called for Auto. Since Auto was not available, she made arrangement and her granddaughter/victim girl alone had gone to Ananthapuram Police Station and lodged the complaint. What had happened to that complaint is not known. Thus, from the available evidence and materials, the conviction of the petitioner to be reconsidered.

9.At this stage, the learned counsel for the 3rd respondent submitted that there is apprehension of life threat to the victim girl if the petitioner comes out on bail. In reply, the learned Senior Counsel for the petitioner submitted that



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the petitioner will not be any hindrance in any manner to the victim girl and he will restrain himself as regards the victim girl and her family members.

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

11. Further, the petitioner shall appear before the Trial Court at 10.30 a.m., on the first working day of every English Calendar 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. Accordingly, this Miscellaneous Petition is ordered.

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To
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- 1.The Sessions Judge,
Special Court for Exclusive Trial of Cases registered
under SC/ST (POA) Act,
Villupuram.
- 2.The Deputy Superintendent of Police,
Gingee Sub Division,
Villupuram District.
- 3.The Inspector of Police,
All Women Police Station,
Gingee, Villupuram District.
- 4.The Central Prison,
Cuddalore.
- 5.The Public Prosecutor,
High Court, Madras.

Note: Issue Order Copy on 04.09.2024.



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M.NIRMAL KUMAR, J.

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