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*Crl.M.P.No.11534 of 2024
in Crl.A.No.1453 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2024

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.11534 of 2024
in
Crl.A.No. 1453 of 2023

Radhakrishnan

... Petitioner

Vs.

The State Represented by,
The Inspector of Police,
All Women Police Station,
Ariyalur.
(Crime No.20 of 2021)

... Respondent

Prayer: Criminal Miscellaneous Petitions filed under Section 430(1) of the BNSS Act, to suspend the sentence imposed in Spl.SC.No.49 of 2021 on the file of the Sessions Judge, Fast Track Mahila Court, Ariyalur dated 06.11.2023 and enlarge the petitioner on bail pending disposal of the above appeal.

For Petitioner : Mr.B.Kumarasamy

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



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ORDER

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The petitioner / A1 in Spl.SC.No.49 of 2021 was convicted by the Trial Court by judgment dated 06.11.2023 and sentenced to undergo 2 years rigorous imprisonment for the offences under Section 9 of the Prohibition of Child Marriage Act and to pay a fine of Rs.5,000/-, in default to undergo 6 months simple imprisonment and 20 years rigorous imprisonment for the offences under Section 6(1) of the POCSO Act and to pay a fine of Rs.10,000/-, in default to undergo 1 year simple imprisonment, against which, he had preferred an appeal in Crl.A.No. 1453 of 2023. He has filed this miscellaneous petition for suspension of sentence and bail.

2. The contention of the learned counsel for the petitioner is that initially 10 persons prosecuted as A1 to A10, of which the petitioner is A1, the petitioner parents are A2 & A3, the petitioner's brother is A4 and the villagers are A5 to A10. The Trial Court acquitted the villagers A5 to A10 of all charges. As regards the petitioner, his parents and brother, they were convicted. A2 to A4 filed a suspension of sentence petition in Crl.MP.No.19084 of 2023 and this Court by order dated 05.03.2024, suspended the sentence and granted bail to them.



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3. The case projected against the petitioner is that the petitioner and P.W.1 / victim girl were lovers and they were found very close which was objected by P.W.2 / the mother of the victim girl and thereafter, on her complaint to the villagers and finding that the petitioner and the victim girl having love affair, marriage was held in village Mariyammal Temple. P.W.2 / mother admits that the marriage was performed and Thali was tied and the petitioner and PW1 were living as husband and wife. During the matrimonial life, it is stated that the petitioner used to beat demanding sridhan articles and P.W.1 complained the same to her mother and thereafter, a complaint lodged.

4. In this case, the matrimonial dispute arose and the petitioner has been implicated. In this case, P.W.2 / mother admits that both the petitioner and the victim belong to same social and economic status. It is only the petitioner beating the victim girl, which led to such situation. Thereafter, the marriage is also projected as though it was a forced marriage. The petitioner and the victim hail from Kundhapuram village, a backward place where the marriage conducted as per custom. The petitioner and the victim girl had married as per the village tradition and custom and there was no forceful marriage.



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5. In view of the same, the petitioner's matrimonial life with the victim girl cannot be projected as penetrative sexual assault. He further submitted that in this case, except P.W.1 & P.W.2, no private individuals and no villagers supported the case of the prosecution. A5 to A10 villagers have been acquitted and this Court granted bail to A2 to A5, who are similarly placed. He further submitted that the victim girl after a relationship with the petitioner had again married one Selvaraj and both living as husband and wife and even a child born to them.

6. Against the said marriage, a complaint in Crime No.8 of 2023 registered against the said Selvaraj who has been arrested and later granted bail by the Special Judge on 23.08.2023 in Crl.MP.No.2652 of 2023 on the ground that a similar complaint earlier lodged by the victim girl and the case in Spl.SC.No.49 of 2021 is in progress.

7. The Apex Court in the case of ***K.Dhandapani Vs. The Inspector of Police*** had held minors getting married within relative is not new in the State of Tamil Nadu and their matrimonial life is accepted by their families, which cannot be lost sight of. In this case, the petitioner is ready to marry the victim girl but, the victim girl had married another person when she was minor, now



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the victim and Selvaraj her second husband have a baby.

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8. The learned Government Advocate (Crl. Side) on the other hand filed his counter and submitted that the case of the prosecution is that on 09.07.2021, the defacto namely Jothika, aged about complainant/victim 15 years, DOB: 22.05.2006. The victim and A-1 are neighbors. A-2 and A-3 are parents and A-4 is the brother of A-1, A-5 to A-10 Village elders, victim and A-1 had love affair from her 9 th standard, which was condemned by victim parents. Thereafter, A-1 compelled the victim and continued his love affair. One day. A-1 came to the victim's house, both were talking, which was seen by her mother who locked the door from outside, called the village president and elders A-5 to A-10. The president scolded the victim and A-1 refused to marry the victim, later on compulsion and force A1 agreed for marriage. On 23.05.2021 marriage performed at Mariamman Koil Kundhapuram, in presence of A-2 to A-10, A-1 tied Thali to victim. Therefore victim was staying in A-1 house, and they had sexual relationship. A-3 harassed the victim for the reason victim parents not presented stridhan articles after the marriage, and forced her out from matrimonial home on 08.07.2021. Hence, victims mother lodged the complaint.

9. From the statement of P.W.1 & P.W.2, it is seen that the petitioner



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and P.W.1 hail from similar social and economical background, the marriage of minors in the village is common, as could be seen from the evidence of P.W.2. It is seen that in this case, the complaint was primarily against the petitioner for beating the victim girl which was complained to her mother / P.W.2, who in turn lodged a police complaint at that time it was found the victim was a minor, and she was not inclined for the marriage. Only due to force she agreed, even during marriage life she was harassed and subjected to cruelty. This strained relationship stemmed up as offence of penetrative sexual assault. Further P.W.1 victim, for the second time before attaining majority as per their village custom married one Selvaraj, and even delivered a baby, again a strained matrimonial relationship with Selvaraj another POCSO case registered against Selvaraj.

10. In view of the same, this Court find that the conviction of the petitioner needs reconsideration. Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal revision:

(a) The petitioner/accused 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



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sum to the satisfaction of the learned Sessions Judge, Fast Track Mahila Court, Ariyalur.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioner shall appear before the Trial Court on the first working day of every English Calendar once in three months at 10.30 a.m., until the disposal of the 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.

11. Accordingly, this Criminal Miscellaneous Petition is ordered.

12.09.2024

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Index : Yes/No

Internet : Yes/No

Speaking order/Non speaking order

Neutral citation : Yes/No

To

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- 1.The Sessions Judge,
Fast Track Mahila Court, Ariyalur.
- 2.The Inspector of Police,
All Women Police Station,
Ariyalur.
- 3.The Superintendent,
Central Prison, Trichy.
- 4.The Superintendent,
Central Prison, Women Wing,
Trichy.
- 5.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

KKN

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