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Crl.MP.No.638 of 2023 in Crl.A.No.55/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.04.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.638 of 2023 in Crl.A.No.55/2023

P.Saravanan

...Petitioner / Appellant

Versus

1.The State Rep. by
The Deputy Superintendent of Police,
Tindivanam Sub Division,
Villupuram District.
Cr.No.352/2017

2.Thiyagasundar

(Impleaded as per order of this Court
dated 30.11.2023 and made in
Crl.M.P.No.18962/2023 in
Crl.A.No.55/2023)

.. Respondents

Prayer:-Civil Miscellaneous Petition filed under Section 389[1] of Cr.P.C.,
to suspend the sentence passed in S.C.No.11/2018 on 05.09.2022 by the



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learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under SC/ST (POA) Act, Villupuram, and enlarge the petitioner on bail till the disposal of the appeal.

For Petitioner : Mr.Gopalakrishna Lakshman Raju
Senior Counsel for
Mr.R.Radha Pandian

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by
Mr.C.Aravind for R1

Ms.S.Sridevi for R2

ORDER

[Order of the Court was made by SUNDER MOHAN, J]

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner vide judgement and order dated 05.09.2022 passed in S.C.No.11 of 2018 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under SC/ST (POA) Act, Villupuram, and to enlarge the petitioner on bail till the disposal of the appeal.



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2. The petitioner in the above Sessions Case, was convicted and sentenced as follows:

Offence under Section	Sentence imposed
341 of IPC	To undergo simple imprisonment for a term of one month
354 A of the IPC	To undergo rigorous imprisonment for a term of 3 years
506 (i) of IPC	To undergo simple imprisonment for 2 years
307 of IPC	To undergo rigorous imprisonment for 10 years and also to pay fine of Rs.5,000/-, failing which the accused shall undergo rigorous imprisonment for further period of 2 years
376 r/w 511 of IPC	To undergo rigorous imprisonment for 7 years
3(1)(w)(i) of SC/ST (POA) Amendment Act 2015	To undergo rigorous imprisonment for 3 years and also to pay fine of Rs.2,000/- failing which, the accused shall undergo rigorous imprisonment for further period of 6 months
3(2)(v) of SC/ST (POA) Amendment Act 2015	To undergo rigorous imprisonment for life and also to pay fine of Rs.3,000/- failing which accused shall undergo rigorous imprisonment for further period of 3 years
The imprisonment shall run concurrently	



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3. Challenging the above conviction and sentence, the petitioner has filed the above Criminal Appeal and he seeks suspension of sentence in the present petition.

4. The case of the prosecution is that on 29.05.2017 at about 12.30 p.m., while the victim was grazing her cattle in the land belonging to one Sakthivel Gounder, the petitioner asked her for directions to the river, and that his behaviour was odd, and when the victim attempted to run from the place, he removed his clothes and tied her to a pine tree and attempted to rape her. It is also alleged that he further pressed the victim's face into the mud and when the victim shouted for help, four children came there and the petitioner ran away.

5. Heard Mr.Mr.Gopalakrishna Lakshman Raju, learned senior counsel for the petitioner [A2] and Mr.E.Raj Thilak, the learned Additional Public Prosecutor appearing for the respondent/State as well as Ms.S.Sridevi, learned counsel for the second respondent/defacto complainant.



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6. Learned counsel for the petitioner submitted that both P.W.1 and P.W.2 admitted that the petitioner was not known to the victim, and that P.W.3, to whom the victim had informed about the occurrence, had also stated that the victim told him that some unknown persons attempted to rape her; that however, in the complaint, the victim mentioned the name of the petitioner with his father's name, which is improbable; and that therefore, the FIR cannot be believed.

7. Since the victim belongs to Scheduled Caste, notice was sent to the victim. However, she had not chosen to engage a lawyer. Therefore, we appointed Ms.S.Sridevi, learned counsel (legal aid) to represent the victim.

8. Learned Additional Public Prosecutor appearing for the State and Ms.S.Sridevi, learned counsel for the defacto complainant, submitted that upon enquiry, the victim came to know about the name of the accused and mentioned the name in the complaint; that the very fact that she had mentioned the name of the petitioner in the complaint would not make her version unreliable; and that a heinous offence against a women has to be



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viewed seriously and opposed the petition for suspension of sentence.

9. On a perusal of the evidence on record, this Court finds that P.W.1 to P.W.3 state that the victim was not aware of the identity of the petitioner. However, there is no averment in the FIR to the effect that the victim came to know about the identity of the petitioner on enquiry. The FIR reads as if the victim was aware of the identity of the petitioner. Be that as it may, the victim states that she was attacked and her face was pressed into the mud. However, the doctor who examined the victim found that there were no external injuries. Therefore, *prima facie*, we are of the view that the allegations do not constitute the offence under Section 307 IPC. Hence, the offence under Section 3(2)(v) of SC/ST Act would not be made out for which life sentence has been imposed. We hasten to add that this is only our *prima facie* view.

10. Considering, the above facts, that the petitioner is in custody from 05.09.2022, and the appeal is not likely to be taken up in the near future, we are inclined to grant the relief of suspension of sentence to the petitioner



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11. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment is **suspended** and the sentence imposed on the petitioner is suspended on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two independent sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Special Court for Exclusive Trial of cases registered under SC/ST (POA) Act, Villupuram;
- (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 first working day 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



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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.

[M.S.R.,J.] [S.M.,J.]
05.04.2024

Anu

Issue order copy by 08.04.2024

Upload the order copy forthwith.

To

1.The Sessions Judge, Special Court for Exclusive Trial of cases registered under SC/ST (POA) Act, Villupuram

2.The Deputy Superintendent of Police, Tindivanam Sub Division, Villupuram District.

3.The Superintendent of Prison, Central Prison, Cuddalore.

4.The Public Prosecutor, Madras High Court, Chennai – 600 104.



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M.S.RAMESH, J

and

SUNDER MOHAN, J

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