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*Crl.M.P.No.12411 of 2024
in Crl.A.No. 1113 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2024

CORAM:

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

Crl.M.P.No.12411 of 2024

in

Crl.A.No. 1113 of 2024

A.Ashokkumar

... Petitioner

Vs.

The State Represented by,
The Inspector of Police,
All Women Police Station,
Ariyalur District.
(Crime No.19 of 2021)

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) r/w. 439 of Cr.P.C., to suspend the sentence and grant bail to the petitioner / appellant for the conviction and sentence imposed in Spl.S.C.No.46 of 2021 by the Sessions Judge, Fast Track Mahila Court at Ariyalur dated 10.08.2024.

For Petitioner : Mr.K.Gandhi Kumar

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



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ORDER

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The petitioner / accused in Spl.S.C.No.46 of 2021 convicted by the Trial Court by judgment dated 10.08.2024 and sentenced 3 years simple imprisonment and to pay a fine of R.5,000/- and in default to undergo 6 months simple imprisonment for offences under Section 12 of the POCSO Act, against which, the present appeal has been filed with suspension of sentence petition.

2. The contention of the petitioner is that the petitioner and the victim girl / P.W.1 are neighbours. They are living in a village where, for a natural call they have to go to the open area in a remote place and it is used by all the villagers. The case projected against the petitioner is that on 09.05.2021, when the victim girl had gone out for the natural call, at that time, the petitioner called the victim girl by waving mobile phone, showing gesture with sexual intention and also threatened that if she does not satisfy his needs, he would post the private photographs taken in the social media.

3. The Victim girl cried and informed to her mother and lodged a complaint. Thereafter, P.W.8 received a complaint and registered the First Information Report. Upon the same, investigation conducted and final report



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filed. But, this case, the petitioner's mobile phone has been seized and the same has not been marked as material object. Further, Ex.P13 is the Forensic Expert report. The forensic report / Ex.13 confirms that there is no photographs as claimed by P.W.1. There is a dispute between the petitioner's family and P.W.1 family with regard to usage of common page area, for which, the petitioner had been falsely implicated. These facts have not been considered by the Trial Court. The Trial Court merely gone on the evidence of P.W.1 which is highly motivated.

4. The learned Public Prosecutor filed counter and submitted that in this case, on the complaint of P.W2 / mother of victim girl, a case in Crime No.19 of 2021 for the offences under Section 294(b), 506(i) r/w. Section 11(i) & 12 of the POCSO Act came to be registered on 12.05.2021. Thereafter, P.W.8 received the complaint registered the case. P.W.9 conducted and completed investigation, filed a charge sheet, listing the witness.

5. During trial, P.W.1 to P.W.19 examined and Exs.P1 to P14 marked. He further submitted that P.W.1 / victim girl had clearly deposed against the petitioner and it is also in confirmity with Ex.C1 recorded under 164



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statement. The victim girl is a minor. P.W.4 is the Headmistress who filed the school admission register. P.W.1 / victim has narrated the event to her mother / P.W.2 and to her uncle / P.W.7. Thereafter, the petitioner was arrested, his mobile phone was seized, sent to forensic examination and in the presence of witness statement recorded and charge sheet filed. The Trial Court on considering the evidence and witness, have rightly convicted the petitioner. The Public Prosecutor further submitted that in this case, the Trial Court had suspended the sentence.

6. Considering the material and the evidence available, it is not in dispute that the petitioner and the respondent are neighbours. There are some dispute with regard to usage of common usage and common area. The alleged occurrence is said to have been taken place on 09.05.2021 and the complaint has been lodged after four days i.e., 12.05.2021 and the First Information Report came to be registered on 13.05.2021. It is also seen that Ex.P13 confirms that there is no photographs as claimed by P.W.1 by which the petitioner is said to have been threatened. Further, in this case, the mobile phone seized has not been produced as a material object. The implication of the petitioner is very much there.



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7. In view of same and further, the Trial Court had also suspended the sentence, this Court is inclined to grant the relief of suspension of sentence.

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 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.



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8. Accordingly, this Criminal Miscellaneous Petition is ordered.

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Index : Yes/No

Internet : Yes/No

Speaking order/Non speaking order

Neutral citation : Yes/No



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To

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



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M. NIRMAL KUMAR, J.

KKN

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