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Crl.M.P. No. 12713 of 2024
in
Crl.A. No. 1140 of 2024

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M. NIRMALKUMAR,J.

The petitioner/accused in Special S.C. No. 29 of 2023 on the file of I Additional District and Sessions Judge for Mahalir Neethimandram, Fast Track Mahila Court, Tiruppur, was convicted for the offences under Sections 11 r/w 12 of POCSO Act and Section 66E of Information Technology Act, 2000 by judgment dated 08.08.2024 and in respect of each of the offence, he was sentenced to undergo 2 years rigorous imprisonment together with a fine of Rs.5000/- carrying a default sentence of 3 months simple imprisonment. The sentences were directed to run concurrently. As against the said conviction and sentence, the petitioner has preferred the above appeal along with this petition for suspension of sentence and bail.

2. The contention of the learned counsel for the petitioner is that the petitioner and victim P.W.1 are relatives. The victim girl was very much interested in the petitioner and she wanted to marry. Though the petitioner



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had resisted the same, the victim girl was constantly texting messages and sending the same to the petitioner. The victim's parents, on coming to know about this, got annoyed and lodged a complaint against the petitioner as though the petitioner had sent messages and that he is the reason for victim girl's behaviour. According to the learned counsel, the mobile phone and the mobile connection were not that of the petitioner and the prosecution had failed to take any steps to prove the same. The only reason given by the Trial Court is that P.W.4, Mahazar Witness, in whose presence, M.O.1 mobile phone was seized, had stated that M.O.1 belongs to the petitioner, which is not acceptable. In this case, the ownership of the mobile phone has not been proved and the corresponding text messages from the other phones have also not been proved. The Trial Court, merely on the basis of Ex.P10 report, convicted the petitioner. In this case, the forensic expert has not been examined. Further, certificate under Section 65(B) of Indian Evidence Act, 1872 is also issued. Hence, marking of Exs.P8 to P11 has been strongly objected as inadmissible in evidence. Learned counsel for the petitioner would submit that suspension of sentence has been granted by the Trial Court till 08.09.2024. Hence, the learned counsel would pray that the



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petition may be allowed.

3. Learned Government Advocate (Crl.Side) submitted that on 03.01.2023, P.W.2, father of the victim had lodged a complaint at All Women Police Station, Tiruppur South and on receipt of the same, P.W.5, the Sub Inspector of Police, All Women Police Station, Tiruppur South registered the case in Crime No. 1 of 2023 for offences under Sections 11 r/w 12 of POCSO Act. Ex.P6 is the FIR. In the said complaint, P.W.2/ complainant stated that he has three daughters and the victim girl, who is his eldest daughter is aged about 16 years and that she is studying in X standard. Further, P.W.2 had stated that on 31.12.2022, he received a nude video photage of his daughter from the phone number of the petitioner/accused through whatsapp. When he enquired his daughter, she informed that the petitioner used to come and talk to her; that he had forced her to take nude video and send it to his phone and thereafter, using the photographs, he had been threatening. The complainant had also stated that prior to this, the petitioner's family had approached him to give his daughter in marriage to the petitioner, who is much elder to his daughter. As the complainant had



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refused, to wreak vengeance, the petitioner had resorted to such a demeaning conduct. The complaint further states that again on 01.01.2023, the petitioner had sent the video to the complainant. On the basis of the said complaint, the Police arrested the petitioner/accused, seized his mobile phone. The mobile phone of victim's parents as well as the accused were sent for forensic examination and it confirmed the origin of photographs and also communicating the same to the de facto complainant's mobile phone. Thereafter, on completion of investigation, charge sheet was filed. During trial, P.W.s 1 to 6 were examined; Exs.P1 to P11 were marked and M.O.1 was marked. On completion of trial, the Trial Court had rightly convicted the petitioner and therefore, the learned Government Advocate (Crl.Side) would pray for dismissal of this petition.

4. Considered the rival submissions and perused the materials on record.

5. It is seen that the entire case rests on forensic evidence. In this case, M.O.1, mobile phone is said to have been seized in the presence of P.W.4. The ownership of the phone as well as in whose name the mobile phone number stands not collected from the Service Provider. Further, in



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WEB COPY this case, Ex.P10 is the forensic report based on which the conviction has been rendered. However, admittedly, no forensic expert has been examined and objections have been raised. Hence, the reliance placed by the Trial Court on Exs.P8, P11 and M.O.1 needs reconsideration. Moreover, the Trial Court had suspended the sentence imposed on the petitioner till 08.09.2024.

6. Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal appeal:

(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 I Additional District and Sessions Judge for Mahalir Neethimandram, Fast Track Mahila Court, Tiruppur.

(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.



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(c) The petitioner shall appear before the Trial Court on the first working day of every English Calendar 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 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.

7. The criminal miscellaneous petition is ordered accordingly.

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23 .09.2024

To

1. The I Addl. District and Sessions
Court for Mahalir Neethimandram,
Fast Track Mahila Court, Tiruppur.
2. The Inspector of Police,
Tiruppur South All Women Police Station,
Tiruppur District.
3. The Public Prosecutor,
High Court, Madras.

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23.09.2024