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Crl.M.P.No.12609 of 2024
in Crl.A.No.758 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2024

CORAM:

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

Crl.M.P.No.12609 of 2024

in

Crl.A.No.758 of 2024

Arul @ Arulhas
S/o.Somasundharam

... Petitioner/Accused

Vs.

The State Rep. by
Inspector of Police,
All Women Police Station,
Jayamkondam,
Ariyalur District.
(Crime No.15/2020)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 430(1) of Bharatiya Nagarik Suraksha Sanhita, 2023, to enlarge the petitioner on bail by suspending the sentence imposed in Spl.S.C.No.43 of 2020 dated 24.05.2024 on the file of Sessions Court, Fast Track Mahila Court, Ariyalur, pending disposal of the above appeal.

For Petitioner : Mr.M.Rajkumar

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



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner seeking to suspend the sentence imposed in Spl.S.C.No.43 of 2020 dated 24.05.2024 passed by the learned Sessions Judge (FAC), Fast Track Mahila Court, Ariyalur and enlarge the petitioner on bail pending disposal of the above criminal appeal.

2.The petitioner/accused in Spl.S.C.No.43 of 2020 was convicted by the trial Court by judgment dated 24.05.2024 and sentenced to undergo 20 years rigorous imprisonment and to pay a fine amount of Rs.20,000/-, in default to undergo 2 years simple imprisonment for offence under Section 6(1) of POCSO Act and 3 months simple imprisonment and to pay a fine amount of Rs.1,000/-, in default to undergo 15 days simple imprisonment for offence under Section 294(b) of I.P.C. The sentences are directed to run concurrently. Aggrieved against the conviction, the petitioner preferred an



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appeal in Crl.A.No.758 of 2024 before this Court along with petition seeking suspension of sentence and bail.

3.During trial, on the side of the prosecution, PW1 to PW12 examined, Exs.P1 to P10 marked and Exs.C1 and C2 marked as Court documents. On the side of the defence, no witnesses examined and no documents marked. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, convicted the petitioner as stated above.

4.The contention of the learned counsel for petitioner is that the petitioner and the victim girl/PW1 are relatives and they are neighbours. The victim girl used to visit petitioner's house regularly and developed interest towards the petitioner and she forced the petitioner to continue the relationship, which later led to physical relationship and the victim voluntarily had physical relationship with the petitioner. During July, 2020



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when the victim became pregnant and it came to the knowledge of victim's mother/PW2, she approached the village panchayat. PW6/Head Man of the village convened a panchayat and the same failed. Thereafter, a complaint was lodged on 31.07.2020, the petitioner was arrested on the same day. He further submitted that later reconciliation arrived between the petitioner's family and victim's family. Thereafter, the victim was recalled on 16.04.2024 and during further cross examination, she admitted that they were living together happily and that day she was also major. But the trial Court, finding that at the time of occurrence victim being a minor, thereafter now giving a turn around to the earlier statement is not acceptable, not considered the victim's statement. Further referring to the PW4/Doctor's evidence submitted that victim informed the Doctor that for the past two years prior to the examination, she was having relationship with the petitioner with consent. Hence, there is no forcible penetrative sexual assault committed by the petitioner. He further submitted that now victim had given birth to a child on



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28.11.2020 and the petitioner, child and victim/PW1 were living together till the date of judgment, i.e., 24.05.2020. Hence, he prays for granting suspension of sentence to the petitioner.

5.The learned Government Advocate (Crl. Side) opposed the contention of the petitioner stating that in this case PW2 is the mother of hte victim girl, she lodged a complailnt to PW10, who received complaint, registered F.I.R./Ex.P8, thereafter PW11 took up investigation, visited scene of occurrence, examined victim girl, recorded her statement, produced the victim before the learned Magistrate, her statement under Section 164 of Cr.P.C. recorded, collected victim's school certificate/Exs.P2 and P3 from PW3. The victim was produced before PW4, who examined the victim, gave reports/Exs.P4 and P5. The accused was arrested in this case. Further submitted that in this case now the victim delivered a baby on 28.11.2020. The petitioner earlier married and have two children in the first marriage.



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when the first marriage was in subsistence, he committed penetrative sexual assault on a minor girl. He further submitted that during trial, on the side of the prosecution, PW1 to PW12 examined, Exs.P1 to P10 marked and Exs.C1 and C2 marked as Court documents. The Trial Court on the evidence of witnesses and the materials produced had rightly convicted the petitioner. Hence, prays for dismissal of the petition.

6.Considering the submissions made and on perusal of the materials available on record, this Court finds that the victim/PW1 and petitioner are relatives and the victim on her own stated that she used to visit petitioner's house and she accepted the relationship with him. Due to the physical relationship, a baby was born to them on 28.11.2020. Prior to it, PW2/mother of the victim during July 2020 convened a Panchayat in the presence of PW6. Since the Panchayat failed, complaint lodged. Had the panchayat been successful, no complaint would have arisen at all. It is also



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seen from the evidence of PW1/victim about her voluntary relationship with the petitioner and later getting married with him, delivery of baby and they are living as husband and wife with the child till the date of judgment. The Doctor, who examined the victim girl confirmed that the victim girl admits her relationship continued for two years. Finding that such relationship in the village from the marginalised of society is not an unusual feature and now the relationship between the petitioner and victim accepted by both families, keeping the petitioner inside would only cause damage and hardship to the concern. Further, the new born would be denied touch and affection of his father. Whatever manner the new born has come to the world but still the petitioner is the biological father, as could be seen from Ex.C2. In view of the subsequent development and PW1/victim admitting her relationship and birth of the child, this Court finds that the conviction of the petitioner needs reconsideration. In view of the same, this Court is inclined to grant suspension of sentence to the petitioner.



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7. 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.

8. Further, the petitioner shall appear before the Trial Court once in three months at 10.30 a.m. on the first working day of the 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 in lieu of the date of his absence as directed by the Trial Court.



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9. 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. Inspector of Police,
All Women Police Station,
Jayamkondam, Ariyalur District.

2. The Sessions Judge,
Fast Track Mahila Court,
Ariyalur.

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

4. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

rsi

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