



Crl.M.P.No.15741 of 2023
in Crl.A.No.1065 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2024

CORAM:

**THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

Crl.M.P.No.15741 of 2023
in Crl.A.No.1065 of 2023

Nagarajan

... Petitioner/Accused

Vs.

The State of Tamil Nadu,
Rep by its Inspector of Police,
All Women Police Station, Chengalpattu.
Crime No.2/2016

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of the Criminal Procedure Code, praying to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Mahila Court, Chengalpattu in Spl.C.No.15 of 2017 dated 06.12.2019 and to release the petitioner on bail.

For Petitioner : Mr.V.Murali

For Respondent : Mr.E. Raj Thilak,
Additional Public Prosecutor
assisted by Mr.C.Aravind

ORDER



Crl.M.P.No.15741 of 2023
in Crl.A.No.1065 of 2023

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(Order of the Court was delivered by **SUNDER MOHAN, J.**)

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Mahila Court, Chengalpattu on 06.12.2019 in Spl.C.No.15 of 2017 and release him on bail.

2. The learned Sessions Judge, Mahila Court, Chengalpattu, in Spl.C.No.15 of 2017, has convicted the petitioner and sentenced him as follows:-

<i>Accused</i>	<i>Offence</i>	<i>Sentence imposed</i>
Accused	Section 342 of IPC	One year rigorous imprisonment along with a fine of Rs.1,000/- in default to undergo simple imprisonment for 1 month.
	Section 354(B) of IPC	3 years rigorous imprisonment along with a fine of Rs.5,000/- in default to undergo simple imprisonment for 3 months.
	Section 506(2) of IPC	2 years rigorous imprisonment along with a fine of Rs.5000/- in default to undergo 3 months simple imprisonment.
	Section 6 r/w. 5(1)(n) of POCSO Act, 2012	Life imprisonment along with a fine of Rs.10,000/- in default to undergo simple imprisonment for 6 months



Crl.M.P.No.15741 of 2023
in Crl.A.No.1065 of 2023

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

4. Heard Mr.V.Murali, learned counsel appearing for the petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor, appearing for the respondent/Police.

5. It is the case of the prosecution that the petitioner/accused is the father of the victim girl and she was aged about 14 years at the time of occurrence; that on 20.12.2015, at about 3.00 p.m, when the victim girl was alone at home, the petitioner asked his daughter to go to the bedroom and thereafter, he inserted his hand into her inner wear and squeezed her breasts and he also penetrated his penis into her mouth; that the petitioner threatened his daughter with the dire consequences and that he committed the same acts several times.

6. The learned counsel for the petitioner submitted that the complaint



Crl.M.P.No.15741 of 2023
in Crl.A.No.1065 of 2023

against the petitioner is false and was lodged belatedly on 22.03.2016 since there was a matrimonial dispute between P.W.1 – wife of the petitioner and the petitioner; that both P.W.1 and P.W.2 – daughter of the petitioner (victim girl) had stated in their cross-examination that the complaint lodged by them was false and that the same was at the instance of the Police. The learned counsel further submitted that the petitioner/accused is in custody from the year 2015 and since the appeal is not likely to be taken up in the near future, he may be granted suspension of sentence.

7. Per contra, the learned Additional Public Prosecutor submitted that both P.W.1 and P.W.2 turned hostile during the cross-examination which was done four months after they were examined in chief and therefore, there is a possibility of the petitioner winning over them and in the light of the medical evidence adduced, it is clear that the prosecution has established its case.

8. We have perused the records carefully and considered the rival submissions.

9. Admittedly, the petitioner is in custody from the year 2015.



Crl.M.P.No.15741 of 2023
in Crl.A.No.1065 of 2023

Further, both P.W.1 and P.W.2 have categorically stated in their cross-examination that the complaint was not true and the allegations in the complaint were written by the Police. This requires examination.

10. Considering the fact that the petitioner is in custody for nearly 9 years and in view of the deposition of P.W.1 and P.W.2 in their cross-examination and that the appeal is not likely to be taken up in the near future, we are inclined to suspend the sentence and grant bail to the petitioner/accused.

11. Accordingly, this Criminal Miscellaneous Petition stands **allowed** 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 sureties each, each for a like sum to the satisfaction of the learned Judicial Magistrate Court, Chengalpattu.;

(ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety



Crl.M.P.No.15741 of 2023
in Crl.A.No.1065 of 2023

bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity;

(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 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.)

22.03.2024

Index: Yes/No

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Note: Issue Order Copy on 26.03.2024



Crl.M.P.No.15741 of 2023
in Crl.A.No.1065 of 2023

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To

- 1.The Judicial Magistrate Court,
Chengalpattu.
- 2.The Sessions Judge,
Mahila Court,
Chengalpattu.
- 3.The Inspector of Police,
All Women Police Station, Chengalpattu.
- 4.The Superintendent of Prison,
Central Prison-I,
Puzhal, Chennai.
- 5.The Public Prosecutor,
High Court,
Madras.



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Crl.M.P.No.15741 of 2023
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M.S.RAMESH, J.
and
SUNDER MOHAN, J.

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Crl.M.P.No.15741 of 2023
in Crl.A.No.1065 of 2023

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