



Crl.M.P. No. 17688 of 2023

in

Crl.A. No. 1255 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2024

CORAM

THE HON'BLE MR. JUSTICE M. NIRMALKUMAR

Crl.M.P. No. 17688 of 2023

In

Crl.A. No. 1255 of 2023

Jeeva

..Petitioner

Vs.

State rep. by
Inspector of Police,
All Women Police Station,
Dharapuram, Tiruppur District
Cr.No. 08/2021.

.Respondent

Prayer: Criminal Miscellaneous Petition to suspend the sentence imposed on the petitioner/appellant in Spl.S.C. No. 100 of 2021 on the file of learned Sessions Judge, Fast Track Mahila Court, Tiruppur dated



Crl.M.P. No. 17688 of 2023

in

Crl.A. No. 1255 of 2023

29.04.2022 and enlarge him on bail pending disposal of the criminal appeal.

For Petitioner :: Mr.M. Vijayaragavan

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

O R D E R

The petitioner/accused in Spl.S.C. No. 100 of 2021, by judgment dated 29.04.2022, was convicted by the Trial Court for offences under Section 5(n) read with Section 10 of POCSO Act, 2012, Section 449 IPC and Section 376(3) IPC and sentenced him to undergo 20 years rigorous imprisonment for the offence under Section 5(n) read with Section 10 of POCSO Act, 2012 and to pay a fine of Rs.10,000/- carrying a default sentence of one year rigorous imprisonment; sentenced him to 10 years rigorous imprisonment and to pay a fine of Rs.10,000/- carrying a default sentence of one year rigorous imprisonment for the offence under Section 449 IPC and for the offence under Section 376(3) IPC, sentenced him to undergo 20 years rigorous imprisonment together with a fine of Rs.10,000/- carrying a default sentence of one year rigorous imprisonment. As against



Crl.M.P. No. 17688 of 2023

in

Crl.A. No. 1255 of 2023

the said judgment, the petitioner preferred the above appeal and the present petition seeking suspension of sentence and bail.

2. The gist of the prosecution case is that the victim's mother P.W.2 and her husband Saravanan are residing in Meenakshipuram, Ambedkar Nagar, Dharapuram. They have two children, P.W.1, minor daughter and a son by name Sabarinath. Their minor daughter is studying in Alocious Girls Higher Secondary School in VIII Standarad and her date of birth is 12.01.2009. One Pandian, who had come from Theni along with his family seeking employment, was their neighbour. Since the victim's house did not have water connection, for the purpose of drawing water, the victim and her mother used to go to Pandian's house. Likewise, as Pandian's house did not have electricity connection, power connection was extended from victim's house thereby they were having good relationship. This being so, when the victim girl was alone at home on 01.09.2021, the said Pandian had trespassed into the house, locked the door and attempted to misbehave with the victim girl. The victim girl pushed him down and raised hue and cry which made the said Pandian to leave the house. Thereafter, the victim



Crl.M.P. No. 17688 of 2023

in

Crl.A. No. 1255 of 2023

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had informed P.W.2 over phone about the incident resulting in lodging of complaint. However, during the examination of the victim girl by P.W.5 Doctor, finding that her hymen was not intact, when the Doctor enquired her, she revealed the name of the petitioner/appellant and thereafter, he was arrested. Under Juvenile Justice (Care and Protection of Children) Act, 2015, the juvenility of the petitioner was verified and assessed, thereafter which, he was proceeded with. During trial, P.W.s 1 to 7 were examined and Exs.P1 to P12 were marked and on completion of trial, the petitioner was convicted and sentenced as stated above.

3. The contention of the learned counsel for the petitioner is that the petitioner and the victim girl were in love with each other. The victim girl did not deny the same. In fact, P.W.2 had lodged a complaint against her neighbour Pandian and not against the petitioner. It was only during the course of examination by P.W.5 Doctor, on persistent questioning, the victim girl had revealed the name of the petitioner and finding that the victim girl's hymen was not intact, it was concluded that the petitioner may be the reason for the same. Hence, he has been arrested. In the complaint as well as



Crl.M.P. No. 17688 of 2023

in

Crl.A. No. 1255 of 2023

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in her earlier statement, only the name of Pandian had been mentioned but in her statement recorded under Section 164 Cr.P.C., she had been forced to implicate the petitioner. The petitioner, being an adolescent, was in love with the victim girl and had moved with her in close quarters. Moreover, the victim girl did not complain against the petitioner. Due to medical report Ex.P6 and the evidence of Doctor P.W.5, the petitioner had been convicted in this case. Learned counsel would further submit that as regards the case against Pandian, in the same crime number, a separate charge sheet was filed in Special S.C. No. 91 of 2021 and he was convicted under Section 447 IPC and Section 7 r/w Section 8 of POCSO Act, 2012. Separate investigation has been conducted and the said Pandian has been let off with a minor offence while the petitioner has been made a scapegoat and charged for major offences and convicted. The learned counsel also brought to the notice of this Court that though the petitioner is not aged about 21 years, still he has been referred to Central Prison, Coimbatore and he is confined there.



Crl.M.P. No. 17688 of 2023

in

Crl.A. No. 1255 of 2023

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4. Learned Government Advocate (Crl.Side) has filed counter and submitted that the victim's mother P.W.2 had lodged a complaint against one Pandian, who is her neighbour. Two years prior to the date of occurrence, the said Pandian and his family had become their neighbours. The victim's family used to take water from Pandian's house and Pandian had been using electricity connection extended from petitioner's house. As such, they were having good relationship. While so, when the victim girl was alone at home, the said Pandian had trespassed into the house and attempted to misbehave with her. The victim girl resisted and pushed him down. Thereafter, she informed her mother P.W.2 over phone and a complaint came to be lodged. At the time of examination by Doctor P.W.5, the petitioner's act was revealed and medical evidence also supported the statement of the victim. The petitioner was arrayed as an accused and the Trial Court proceeded against him in Special S.C. No. 100 of 2021 for the aforementioned offences and convicted and sentenced him as stated above. As against Pandian, the case was split up and taken up in Special S.C. No. 91 of 2021 and he was convicted for the offences aforesaid.



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Crl.M.P. No. 17688 of 2023

in

Crl.A. No. 1255 of 2023

5. Considered the submissions made on either side and perused the materials on record.

6. It is seen that in the complaint, there is no allegation against the petitioner and it was lodged only against Pandian. The petitioner seems to have been in love with the victim girl and the victim was a minor. At the time of occurrence, the petitioner was said to be aged about 17years . Therefore, as per Juvenile Justice (Care and Protection of Children)Act, 2015, preliminary assessment was made and he was proceeded with as a major under Section 18(3) of Juvenile Justice Act. The victim girl did not, in the first instance, state anything about the petitioner and only after persistent questioning, her love affair with the petitioner had been revealed. Finding that her hymen was not intact, when the victim girl was further grilled, she had stated about the petitioner. When the petitioner had been found to be the reason, neither in the complaint nor in the earlier statement, the victim girl had stated anything about the petitioner. Only later, the petitioner name had been revealed and further, the victim girl stated about her love



Crl.M.P. No. 17688 of 2023

in

Crl.A. No. 1255 of 2023

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relationship with the petitioner. The petitioner, being an adolescent, not aware of the consequences, had moved with the victim girl in close quarters. Considering the age of the petitioner, his love relationship with the petitioner and also the act of Pandian, this Court finds that the conviction of the petitioner needs re-consideration.

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 Sessions Judge, 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 Sessions Judge may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their



Crl.M.P. No. 17688 of 2023

in

Crl.A. No. 1255 of 2023

identities.

(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.

M. NIRMALKUMAR,J.

nv

7. Accordingly, this Criminal Miscellaneous Petition is ordered.

02.09.2024

nv

To

1. The Sessions Judge,

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Fast Track Mahila Court,
Tiruppur.

2. The Superintendent,
Central Prison,
Coimbatore.
3. The Public Prosecutor,
High Court, Madras.



Crl.M.P. No. 17688 of 2023

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Crl.A. No. 1255 of 2023

Crl.M.P. No. 17688 of 2023

In

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