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Crl.M.P.No.13939 of 2024 in Crl.A.No.1242 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.13939 of 2024
in Crl.A.No.1242 of 2024

Chibiraj

... Petitioner/Sole Accused
Vs.

The State Rep. by
The Inspector of Police,
All Women Police Station,
Thudiyalur, Coimbatore District.
(Cr.No.24/2020) ... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 430 of BNSS, to suspend the sentence imposed in S.C.No.143 of 2024 dated 26.09.2024 on the file of the learned Sessions Judge, Mahila Court/Additional Special Court for Exclusive Trial cases under POCSO Act, Coimbatore, and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.N.Ponraj
For Respondent : Mr.V.J.Priyadarsana
Government Advocate (Crl. Side)
assisted by Ms.A.Shahana Fathima

ORDER

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner/accused by judgment and order dated 26.09.2024 passed in S.C.No.143 of 2024 on the file of the



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learned Sessions Judge, Mahila Court/Additional Special Court for Exclusive Trial cases under POCSO Act, Coimbatore, and to enlarge the petitioner on bail pending disposal of the appeal.

2. It is the case of the prosecution that the petitioner and the victim were to get married and an engagement function was also held; that before the marriage the petitioner has induced the victim to have sexual relationship and thereafter, refused to marry the victim.

3. The petitioner was convicted and sentenced as follows:

Offence under Section	Sentence imposed
366 of IPC	To undergo imprisonment for five years and to pay a fine of Rs.1,000/- in default to undergo imprisonment for one year.
417 of IPC	To undergo one year imprisonment.
376 (2)(j) of IPC	To undergo imprisonment for ten years and to pay a fine of Rs.1,000/- in default to undergo imprisonment for one year.
376 (2)(n) of IPC	To undergo imprisonment for ten years and to pay a fine of Rs.1,000/- in default to undergo imprisonment for one year.
Sentences were ordered to run concurrently.	

4. Heard Mr.N.Ponraj, learned counsel for the petitioner and Mr.V.J.Priyadarsana, learned Government Advocate (Crl.Side) appearing



for the respondent/State.

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5. The learned counsel appearing for the petitioner would submit that the petitioner and the victim were due to get married; that the proposal to get married failed, since the petitioner found the victim had an earlier love affair, which was suppressed to him; and that the evidence would suggest that the victim and the petitioner had consensual sexual relationship and therefore, the offence under Section 376 of IPC, would not be made out. He further submitted that the petitioner is in custody from 26.09.2024 and hence, prayed for grant of suspension of sentence to the petitioner.

6. The learned Government Advocate (Crl. Side) *per contra* submitted that the prosecution case has been established beyond reasonable doubt and the trial Court rightly found the accused guilty of the offence under Section 366, 376(2)(j), 376(2)(n) and 417 of IPC and therefore, the petitioner is not entitled to suspension of sentence.

7. This Court finds from the evidence of the victim that though the occurrence took place in the year 2019, the complaint was filed in the



year 2020. The victim and petitioner had a consensual sexual relationship on several occasions and since the petitioner did not keep up his promise to marry the respondent, the complaint has been filed. Whether the overt act attributed to the petitioner would constitute an offence under Section 376 of the IPC, has to be examined in the appeal.

8. Therefore, considering the above facts, the period of incarceration and the fact that the appeal is not likely to be taken up in the near future, this Court is inclined to grant the relief of suspension of sentence to the petitioner.

9. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioner is suspended and the petitioner is ordered to be released on bail on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.10,000/- , with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Mahila Court/Additional Special Court for Exclusive Trial cases under POCSO Act, Coimbatore;
- (ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial



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

(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.

05.11.2024

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Issue order copy by 07.11.2024
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To



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SUNDER MOHAN, J.

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- 1.The Sessions Judge, Mahila Court/Additional Special Court for Exclusive Trial cases under POCSO Act.
Coimbatore.
2. The Inspector of Police,
All Women Police Station,
Thudiyalur, Coimbatore District.
3. The Superintendent of Prisons,
Central Prison, Coimbatore.
- 4.The Public Prosecutor,
Madras High Court.

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