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*Crl.M.P.No.16743 of 2023
in Crl.A.No.1146 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2024

CORAM:

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

Crl.M.P.No.16743 of 2023

in

Crl.A.No.1146 of 2023

Kumaravel

... Petitioner

Vs.

1. State represented by
Inspector of Police,
All Women Police Station,
Gudalur.

2. Shalini

... Respondents

PRAYER: Criminal Miscellaneous Petitions filed under Sections 389(1) of Cr.P.C to suspend the sentence imposed on the petitioner in Spl.C.C.No.10 of 2020 passed by the Sessions Judge of Magalir Neethimandram, (FTMC), Udthagamandalam, The Nilgiris by a judgment dated 07.09.2023 and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.K.Balasubramaniam

For Respondents : Mr.S.Raja Kumar
Additional Public Prosecutor for R1
R2-Notice served. No Appearance

ORDER



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This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence of imprisonment imposed on him in Spl.C.C.No.10 of 2020 by a judgment dated 07.09.2023 on the file of the learned Sessions Judge of Magalir Neethimandram, (FTMC), Udhagamandalam, The Nilgiris and to enlarge the petitioner on bail pending disposal of the above Appeal.

2. The petitioner/Accused in Spl.C.C.No.10 of 2020 was convicted by the Trial Court for the offence under Sections 5(l) r/w 6, 5(j)(ii) r/w 6 and 5(n) r/w 6 of POCSO Act, 506(i) of IPC and Section 3(1)(w)(i) of SC and ST Act and the petitioner was sentenced as follows:

<i>S.No.</i>	<i>Offences</i>	<i>Punishment</i>
1.	5(l) r/w 6 of POCSO Act	To undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1000/- in default, to undergo 6 months Simple Imprisonment
2.	5(j)(ii) r/w 6 of POCSO Act	To undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1000/- in default, to undergo 6 months Simple Imprisonment
3.	5(n) r/w 6 of POCSO Act	to undergo 10 years Rigorous Imprisonment and fine of Rs.1000/- in default of payment of fine, to undergo 6 months Simple Imprisonment
4.	506(i) of IPC	To undergo one year Rigorous Imprisonment and fine of Rs.1000/- in default of payment of fine, to undergo



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<i>S.No.</i>	<i>Offences</i>	<i>Punishment</i>
		3 months Simple Imprisonment
5.	Section 3(1)(w)(i) of SC and ST Act	To undergo one year Rigorous Imprisonment and fine of Rs.1000/- in default of payment of fine, to undergo 3 months Simple Imprisonment

Aggrieved against the same, the present appeal has been filed by the petitioner/accused. The present miscellaneous petition seeking suspension of sentence and bail is filed by the accused.

3. During trial, on the side of the prosecution, PW1 to PW19 examined and marked Exs.P1 to P32 and 3 Material objects. On the side of the defence, no witnesses examined and 4 documents were marked as Exs.D1 to D4. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, had convicted the petitioner as stated above.

4.The contention of the learned counsel for the petitioner is that PW1/victim, in her evidence has stated that she is a major. In Exs.D1 to D4, it is recorded that she is of 18 years age. The school certificate of the victim says that her date of birth is 05.09.2001 and to save the accused, she has uttering falsehood, for which, the Trial Court has also treated her as hostile. It is submitted by PW3/Sister of the victim that she had taken the victim to the Doctor for examination. At that time, the Doctor informed that the victim



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was pregnant, but she had attained majority at that point of time. The learned counsel further submits that in this case, the complaint has been given with a delay and at the time of lodging the complaint, the victim was 18 years old and that too after the delivery of boy baby on 29.10.2019. He further submitted that there is no alternate charge under Section 376 IPC, the age of the victim girl is doubtful. Further, in this case, since the victim parents are uneducated, the School Authorities have recorded the age of the victim as per the requirement. The victim, in her evidence has clearly stated that she is a major. The learned counsel further submitted that the Trial Court finding that the accused has not produced any document to show the date of birth of the victim girl is 05.09.2001 is not proper, when the evidence of PW1 proved the age of the victim is 19 years and the same was also confirmed vide Exs.D1 to D4. The prosecution has not questioned Exs.D1 to D4 and the Trial Court, placing reliance on Ex.P6-School certificate, convicting the petitioner is not proper. Hence, he prays for granting suspension of sentence to the petitioner.

5. The learned Government Advocate (Crl. Side) on the other hand filed his counter and submitted that the victim girl is now residing at Nambikkai Illam, Kothar Vayal, Gudalur and she lost her mother in the year 2010 and her father is doing coolie work and she has a sister by name



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Vanisri. The victim girl, aged 18 years [DOB 05.09.2001] studied upto 10th standard by staying at Par-wood Government hostel and then upto 12th standard by staying at Government Hostel, Gudalur. In the year 2016, her sister Vanisri married one Kumaravel [petitioner/accused] of Karur and they were residing in a rented house belonged one Mohammed Ali at Ponvayal, Gudalur. After completion of 12th standard in March 2018, the victim girl had gone to her sister's house and stayed there itself. At that time, the victim was aged 17 years. Since her sister got conceived, the victim girl was staying there in order to help her sister. Meanwhile, on 17.06.2018, Sunday, at night, after watching TV the victim girl slept in a separate room at her sister's house and her sister and her husband slept in another room. At about 11.30.p.m the petitioner/accused came to her room, and by lying beside the victim girl, hugged and kissed her and when the victim girl moved away, the petitioner/accused told that it was not wrong and thereafter, he had sexual intercourse with her.

5.1. It is submitted that the petitioner/accused had sexual intercourse with victim girl on several occasions during night hours. In December, 2018 they began to reside in a rented house belonged to one Raja, Athikarai Vayal and even in that house, the petitioner/accused had sexual intercourse with the



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victim girl several times after her sister slept. In January 2019, the victim girl did not get her period and when she informed the same to the petitioner/accused, he threatened her by saying that if she discloses the matter to anyone, he would send her sister without lift. Meanwhile, her sister noticed the victim girl often getting vomiting and when she enquired, the victim girl did not disclose anything but had gone to Coimbatore and joined in a mill and began to work there. There the victim girl fell sick, her sister came and brought her to her house and then took her to Priya Hospital, Gudalur and there the Doctor told that the victim girl was six months pregnant. Thereafter, the victim girl informed her sister that her husband is the root cause for her pregnancy. Hence, the victim's sister therefore got hatred feeling towards the victim girl and so he brought her to their paternal aunt Sasikala's house and left her there itself. But, the victim girl did not like to continue to be in her paternal aunt's house and hence she had gone to Nambikkai Illam Home and she was staying there itself.

5.2. It is further submitted that one Sangeetha, Warden of the home told the victim girl to give complaint before police, but the victim girl refused as she was about to deliver a child. Thereafter, the victim girl taken to Government Hospital, Gudalur and on 29.10.2019 she begotten a male child.



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As there was no one to look after the child and the victim girl also fell sick, no complaints could be given to police immediately. Later with the help of the inmates of the home, she came and lodged the complaint before the respondent police.

5.3.It is submitted that based on the above complaint, a case was registered in Gudalur, All Women Police Station Crime No.10 of 2019 u/s 5(i) (ii), 5(l) (n) (p), 6 of POCSO Act, 2012 on 09.12.2019 at about 23.30 hours by Tmt.Udhayakumari, then Women Head Constable 1188 and the same was submitted before Tmt.Kanmani, then Inspector of Police and took up the case for investigation.

5.4. It is submitted that then Inspector of Police went to the scene of occurrence, drew rough sketch, prepared observation mahazar in the presence of witnesses and also examined the witnesses and recorded the statements.

5.5. It is submitted that during the course of investigation, on 11.12.2019 at about 12.00 hours, then Deputy Superintendent of Police arrested the accused and recorded his confession statement in the presence of witnesses, later sent to remand for judicial custody.

5.6. It is submitted that after completion of elaborate and detailed investigation, based on the statement of witnesses and material evidences on



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04.02.2020, then Deputy Superintendent of Police altered the Sections into 5(j) (ii), 5(l), 5(n), 5(p), 6, 7, 8 of POCSO Act 2012, Sec.506(i) of IPC and Sec.3(1) (w) (i) SC/ST (POA) Amendment Act 2015 and filed charge sheet against accused persons before the Sessions Judge of Magalir Neethimandram (FTMC), Udhagamandalam, the Nilgiris and the same was taken on file in Spl.C.C.No.10/2020.

5.7. It is submitted that Charges framed against the petitioner/accused under sections 5(1) r/w 6, 5 (j) (ii) r/w 6 & 5 (n) r/w.6 of POCSO Act, 2012, 506(i) of IPC and Sec. 3(1) (w) (i) of SC/ST (POA) Act, 2015.



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5.8. The prosecution has examined 19 witnesses and marked 32 exhibits and no material objects. No witness, 4 exhibits and no material object were marked on the side of the defence.

5.9. PROSECUTION SIDE WITNESSES :-

P.W.1	Victim girl, aged 18 years [DOB 05.09.2001]	Deposed that narrated the facts and lodged a complaint before the respondent Ex.P1 & given statement before the JM Ex.P2 Treated hostile
P.W.2	Tmt.Sasikala/paternal aunt of PW1	Deposed that did not know about the occurrence
P.W.3	Tmt.Vanisri / sister of the victim girl	Treated hostile
P.W.4	Tmt.Sangeetha/Warden of the Home	Deposed that PW1 was brought to their home, at that time, she was pregnant. Thereafter, took P.W.1 to hospital and delivered a male child, later she accompanied the victim girl to complaint before police
P.W.5	Tr.Raja/Spl.Police	Deposed that he knew the accused and they stayed there for one year, after that vacated the house and went to another house
P.W.6	Tr.Santhosh/observation mahazar	Deposed that attested observation mahazar Ex.P3
P.W.7	Dr.Vidhya/Gynecologist G.H	Deposed that examined P.W.1 and issue report Ex.P.4
P.W.8	Tmt.Bindu/ Teacher at St.Antony's School	Deposed that her father rented out his house to the accused and there was residing with his wife and child. Thereafter, they vacated house and went to some other place, later came to know P.W.1 became pregnant.



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P.W.9	Tr.Uma Sankar/father of victim girl	Deposed that P.W.1 phoned to him and informed that the accused did like this and he was the reason for her pregnancy.
P.W.10	Tr.Vasanthakumar	Treated hostile
P.W.11	Tr.Kamal/VAO, Gudalur	Deposed that as per request of I.O, there the accused gave statement Ex.P5
P.W.12	Tr.Iyyapan/Head Master	Deposed that as per request of I.O, issued certificate Ex.P.6
P.W.13	Tmt.Azhagarasi/Constable	Deposed that took P.W.1 go the Magistrate wherein recorded her statement under 164 Cr.P.C and also to hospital for medical examination
P.W.14	Tr.Jeevanraj/constable Grade-II	Deposed that took the accused to the hospital for medical examination and after examination he left the accused at Sub Jail, Gudalur
P.W.15	Tr.Senthil/Tahsildar	Deposed that as per request of I.O, issued community certificate of the accused Ex.P9
P.W.16	Tmt.Udayakumari/Head Constable	Deposed that received complaint from P.W.1 and based on that, a case was registered in Cr.No.10/2019 and the same was submitted before I.O for investigation Ex.P10
P.W.17	Dr.Pravinraj/Asst.Surgeon, Gudalur	Deposed that examined P.W.1 and issued AR Ex.P11 and referred her to Gynecologist for necessary examination
P.W.18	Tmt.Kanmani/Inspector of Police	Deposed that took up the case and went to place of occurrence, prepared observation mahazar and rough sketch, examined the witnesses and recorded their statements.
P.W.19	Tr.Jaisingh/Deputy Superintendent of Police	Deposed that took up the case for further investigation, examined the witnesses arrested the accused and sent to remand for judicial custody, collected



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community certificate and altered the section, then filed charge sheet against the accused before the competent court in accordance with law.

5.10. It is submitted that after due trial, the Trial Court by its judgment in [Spl.C.C.No.10 of 2020](#) dated 07.09.2023, the petitioner/accused was found guilty and convicted for the following offences:

U/s.5(1) r/w 6 POCSO Act	Sentenced him to undergo 10 years for R.I and to pay a fine of Rs.1000/- i/d to undergo R.I for six months
u/s.5(j) (ii) r/w 6 of POCSO Act	Sentenced him to undergo 10 years for R.I and to pay a fine of Rs.4000/- i/d to undergo R.I for six months
u/s.5(n) r/w 6 of POCSO Act	Sentenced him to undergo 10 years R.I and to pay a fine Rs. 1000/-i/d to undergo R.I for six months
U/s 506(i) IPC	Sentenced him to undergo R.I for one year and to pay a fine of Rs.1000/- i/d to undergo S.I for 3 months
U/s 3(1) (w) (ii) of SC/ST Act	Sentenced him to undergo R.I for one year and to pay a fine of Rs.1000/- i/d to undergo S.I for three months

Hence, prays for dismissal of the petition.



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6. Notice has been taken to the second respondent/*defacto* complainant, served on her and thereafter, proof of service has been produced, but there is no representation.

7. On perusal of the materials, it is seen that from the evidence of PW1, the age of the victim had confirmed that she was a major. There is no alternate charge for the offence under Section 376 of IPC. PW1 in her evidence has admitted that her parents are uneducated. The contention of the petitioner is that the School Authorities registered the age of the victim as per the requirement therein and the real date of birth of the victim is 05.09.2001. The Trial Court directing the petitioner to prove the age of the victim is not proper. Considering the submissions made and the fact that the victim is major, this Court is inclined to suspend the sentence imposed on the petitioner.

8. 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) each, with two sureties, each for a



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like sum to the satisfaction of the learned Sessions Judge, Magalir Neethimandram, (FTMC), Udhagamandalam, The Nilgiris.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Judge may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) 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 revision and if she is not able to appear before the Trial Court on that day, she 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 her absence as directed by the Trial Court.

9. Accordingly, this Criminal Miscellaneous Petition is ordered.

06.03.2024

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Note: Issue order copy today [07.03.2024]



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M. NIRMAL KUMAR, J.

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To

- 1.The Inspector of Police,
All Women Police Station,
Gudalur.
- 2.The Sessions Judge
Magalir Neethimandram
(FTMC), Udhagamandalam, The Nilgiris.
3. The Superintendent,
Central Prison,
Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.

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