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Crl.M.P.No.14287 of 2024 in Crl.A.No.1279 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.11.2024

PRONOUNCED ON : 22.11.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.14287 of 2024
in Crl.A.No.1279 of 2024

Santhoshkumar ... Petitioner/Sole Accused

Vs.

The State Rep. by
The Inspector of Police,
All Women Police Station,
Kangayam, Tiruppur District.
(Cr.No.8/2018) ... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 374 (2) of Cr.P.C., / 415 BNSS, to suspend the sentence imposed in Spl.S.C.No.22 of 2019 dated 24.07.2024 on the file of the learned Sessions Judge, Magalir Needhi Mandram (FTMC), Tiruppur and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.M.Vignesh

For Respondent : Dr.C.E.Pratap
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner/accused by judgment and



order dated 24.07.2024 passed in Spl.S.C.No.22 of 2019 on the file of the learned Sessions Judge, Magalir Needhi Mandram (FTMC), Tiruppur, and to enlarge the petitioner on bail pending disposal of the appeal.

2. The case of the prosecution is that the petitioner had promised the victim that he would get married to her; that on 14.05.2018, he asked her to go to a bus stand from which place, he took her to another place, stayed overnight in that place in a lodge; that thereafter, tied thalli, outside Velankanni Church and thereafter, committed penetrative sexual assault; that he also took up a rented place and stayed their for twenty days, along with the victim girl; that on a complaint given by the father of the victim, the victim and the petitioner were secured.

3. The petitioner was convicted and sentenced by the trial Court as follows:

Offence under Section	Sentence imposed
5 (l) r/w 6 of POCSO Act	To undergo RI for ten years and to pay a fine of Rs.5,000/-, in default to undergo SI for three months
5 (j)(ii) r/w 6 of POCSO Act	Since, the accused is sentenced for offence under Section 5 (l) r/w 6 of POCSO Act, no separate sentence is imposed.



366 of IPC	To undergo RI for three years and to pay a fine of Rs.2,000/-, in default to undergo SI for three months.
9 of the Prohibition of Child Marriage Act	To undergo RI for one year.
The sentences are ordered to run concurrently.	

4. Heard Mr.M.Vignesh, learned counsel for the petitioner and Dr.C.E.Pratap, learned Government Advocate (Crl.Side) appearing for the respondent/State.

5. The learned counsel appearing for the petitioner would submit that it is a case of love affair; that the parents were aware of the said love affair and therefore there is a delay of six days in lodging the missing girl complaint; that the prosecution had not established the age of the victim; that in any case, the victim had disclosed to him that she was above 18 years; that there are vital contradictions in the evidence of the victim in her Section 164 Cr.P.C. statement, which requires consideration in the above appeal; that the petitioner is in custody from 24.07.2024 and was in custody during the trial for about 210 days; and that therefore, the sentence imposed on the petitioner may be suspended.

6. The learned Government Advocate (Crl. Side) *per contra*



submitted that the prosecution had established the age of the victim; that though the victim had gone with the petitioner voluntarily, the offences under the POCSO Act has been made out and therefore, the trial Court was right in convicting the appellant; and that therefore, the petitioner would not be entitled to suspension of sentence.

7. The evidence adduced on the side of the prosecution would show that the victim had voluntarily gone with the petitioner. The petitioner was aged 24 years at the time of the occurrence and according to the prosecution, the victim was aged about 17 years at the time of the occurrence. The relationship between the petitioner and the victim appears to be one arising out of mutual innocence and biological attraction. That apart, the submissions made by the learned counsel for the petitioner requires consideration in the appeal.

8. Considering the above, the age of the petitioner and the victim and period of incarceration and also 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**. 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, Magalir Needhi Mandram (FTMC), Tiruppur;
- (ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial 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.

22.11.2024

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Issue order copy by 22.11.2024

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SUNDER MOHAN, J.

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- To
1. The Sessions Judge,
Magalir Neethi Mandram (FTMC), Tiruppur.
 2. The Inspector of Police,
All Women Police Station,
Kangeyam, Tiruppur District.
 3. The Superintendent of Prisons,
Central Prison, Coimbatore.
 4. The Public Prosecutor,
Madras High Court.

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