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*Crl.M.P.No.18978 of 2023
in Crl.A.No.1436 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2024

CORAM:

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

Crl.M.P.No.18978 of 2023
in Crl.A.No.1436 of 2023

Murugan

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Pallipalayam Police Station,
Namakkal District.
[Crime No.11 of 2015]

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence passed imposed on the petitioner by judgment dated 27.09.2023 made in Special C.C.No.38 of 2018 on the file of the Mahila Court [Mahila Fast Track Court], Sessions Judge, Namakkal and enlarge the petitioner on bail pending disposal of the above appeal.

For Petitioner : Mr.P.Palanikumar

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Sessions Judge, Mahila Court [Mahila Fast Track Court], Namakkal by judgment dated 27.09.2023 made in Special C.C.No.38 of 2018 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused was convicted by the Trial Court in Special C.C.No.38 of 2018 and sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo three months simple imprisonment for the offences under Sections 363 IPC, to undergo two years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo three months simple imprisonment for the offence under Section 9 of Prohibition of Child Marriage Act and to undergo twenty years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo



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three months simple imprisonment for the offence under Section 5(l) r/w. 6 of POCSO Act. All the sentences to run concurrently. Against which, the present appeal is filed along with suspension of sentence.

3.The gist of the case is that the victim girl, a minor aged about 14 years was a friend of the petitioner's sister. The petitioner and the victim girl had a love affair. On 31.12.2014 at about 6.00 p.m., when the victim girl went to attend the nature's call, she was abducted and kidnapped by the petitioner along with his friend and took the victim to Vellakoil. Thereafter on 01.01.2015 the petitioner took the victim girl to Vinayagar Temple in Karur, Coimbatore Road, tied a thali and from 01.01.2015 to 19.03.2015 the petitioner took her to various places like Karur, Thiruvannamalai and other places. During that period, the petitioner committed penetrative sexual assault on the victim girl. On the complaint of the victim girl's parents, case registered, the accused was arrested, the victim girl secured, statement of witnesses recorded, both the petitioner/accused and the victim girl were subjected to medical examination. On completion of investigation, charge sheet filed before the Trial Court.



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4.Before the Trial Court, on the side of the prosecution P.W.1 to P.W.18 were examined and Ex.P1 to Ex.P19 marked. On the side of the petitioner/accused, no witnesses examined and no exhibits marked. On conclusion of the trial, the Trial Court convicted the petitioner as stated above.

5.The contention of the learned counsel for the petitioner is that the petitioner himself was a minor aged about 19 years at the time of occurrence. He would submit that the petitioner and the victim girl were in love with each other which is not denied by the victim girl. He would further submit that a marriage was proposed to the victim girl to a 35 years old man by victim girl's mother. Though the victim girl resisted the same but her mother went ahead with the marriage arrangements. Therefore, the victim girl forced the petitioner to take her away, otherwise she would end her life. Having left with no other option, the petitioner accompanied the victim girl and they went to various places. He would further submit that the petitioner is a labourer, employed in various places, earned money and



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both the petitioner and the victim girl lived happily. Due to the physical and psychological developments coupled with adolescent age, not knowing the seriousness and complications, both stayed together, had physical relationship. There is no question of kidnap since the petitioner was forced budge to the victim girl's cry. He further submitted that the victim girl in her 164 statement narrated the entire sequence from the day she was missing till she was secured. She confirmed the relationship and also absolved the petitioner. She further stated that her father promised that she would be given in marriage to the petitioner once both of them attained majority and thereafter only, the victim girl was willing to go with her parents. Since the victim girl and the petitioner belonged to different community, their marriage could not take place and now the petitioner is languishing in prison.

6.The learned counsel for the petitioner submitted that P.W.1 and P.W.3 are the mother and father of the victim girl/P.W.2 and P.W.4 is the sister of the victim girl, who stated about the petitioner and the victim girl, love affair, elopment and missing from 31.12.2014 to 19.03.2015 till they



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were apprehended near Pallipalayam Bus Stand. P.W.5 and P.W.6 are the neighbours who state about the relationship between the petitioner and the victim girl. P.W.7 is the witness to the observation mahazar and the rough sketch. P.W.11, P.W.12 and P.W.16 are the Doctors who examined the petitioner and the victim girl and issued age certificate, potency certificate and the medical certificates. It is seen from the examination and medical certificate there is no external injuries, no force used by the petitioner. Thus, from the initial stage when the victiming was examined as well as before the Doctor and in her 164 statement, the victim girl confirmed it was she who forced the petitioner to take her away since her mother was arranging for her marriage with a 35 years old man as second wife. Hence, prayed for suspension of sentence.

7.The learned Additional Public Prosecutor appearing for the respondent Police submitted that on 09.01.2015, the defacto complainant lodged a complaint before the respondent police stating that his daughter's was aged about 15 years at the time of occurrence. On 31.12.2014, the petitioner kidnapped the victim from her parents and went to Karur. On



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01.01.2015, at one Vinayagar Temple, Karur to Coimbatore Road, the petitioner tied Thali. Then the petitioner took the victim to the house of one Ramasamy and committed penetrative sexual assault for several times. On the complaint of victim's mother, FIR was registered by the respondent Police in Crime No.11 of 2015 for offence under Sections 366(A), 363, 376 IPC r/w Sections 3 & 4 of Protection of Children from Sexual Offence Act, 2012 on 09.01.2015. The Investigating Officer and he went to the scene of occurrence, prepared observation mahazar and rough sketch, in presence of witnesses and examined the witnesses and recorded their statements, arrested the petitioner and secured the victim girl on 19.03.2015. The victim girl stated that she was forcibly kidnapped from her home by the petitioner, tied thali and had sexual intercourse with her. Thereafter, the petitioner was arrested and confession statement was recorded and he was remanded to judicial custody. After further investigation, the respondent Police had altered the Sections to Sections 366(A) & 376(2)(i) IPC and Sections 6, 5(l) of POCSO Act, 2012 and Section 9 of Child Marriage Act. On completion of investigation, charge sheet filed before the trial Court and the same was taken on file as Special C.C.No.38 of 2018. During trial, the prosecution



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examined 18 witnesses and marked 19 exhibits and no material objects were marked. On the side of defence, no exhibits and no material objects marked. On conclusion of trial, the trial Court convicted the petitioner as stated above. Hence, prays for dismissal.

8.Considering the submissions made and on perusal of the materials, it is seen that the petitioner and the victim girl were of adolescent age at the time of occurrence. The victim girl in an unequivocal terms confirms that it was she who forced the petitioner to take her and to save her life, but for such compulsion the petitioner would not have gone with the victim girl, thereafter, they lived together happily. The petitioner became the victim to the circumstances. Further, the school certificate and medical evidence needs re-consideration, the petitioner had putforth arguable points in his favour. Hence, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.

9.Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner



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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, Mahila Court [Fast Track Mahila Court], Namakkal.

10.Further, the petitioner shall appear before the Trial Court on the first working day once in three months 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.

11.Accordingly, this Miscellaneous Petition is ordered.

23.01.2024

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Note: Issue order copy on 24.01.2024



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M. NIRMAL KUMAR, J.

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To

- 1.The Inspector of Police,
Pallipalayam Police Station,
Namakkal District.
- 2.The Sessions Judge,
Mahila Court [Fast Track Mahila Court],
Namakkal.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.

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