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*Crl.M.P.No.18305 of 2023
in Crl.A.No.1307 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2024

CORAM:

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

Crl.M.P.No.18305 of 2023
in Crl.A.No.1307 of 2023

Saravanan

... Petitioner

Vs.

State rep. by
The Inspector of Police,
All Women Police Station,
Sooramangalam, Salem City.
(Cr.No.4/2017)

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence of imprisonment passed by the Trial Court passed by the Sessions Judge, Principal POCSO Court, Salem dated 23.09.2023 in Spl.S.C.No.59 of 2019 and direct release of the petitioner pending disposal of the appeal.

For Petitioner : Mr.S.Kingston Jerold

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



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petitioner to hand over the victim girl to her parents, the petitioner made her to stay in the field for a day where the petitioner had intimate relationship with her in the pump room. On the next day, the petitioner took the victim girl to Hogenakkal and thereafter left the victim girl in her parents' house on 26.02.2017. After the victim girl came back, P.W.1/mother of the victim lodged a complaint to P.W.12/Sub-Inspector of Police and a case was registered. On completion of investigation, charge sheet filed against the petitioner for the offence under Section 366 IPC and Section 3(a) r/w. 4 of POCSO Act, 2012.

4.Before the Trial Court, on the side of the prosecution P.W.1 to P.W.14 were examined, Ex.P1 to Ex.P19 and M.O.1 were marked. On the side of the petitioner/accused, no witness was examined and no documents were 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 and the victim girl were in love with each other which is not



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disputed by the victim girl/P.W.2, who was aged about 17 years. The date of birth of the victim girl was proved by Ex.P7 and Ex.P8. He would submit that P.W.11/Doctor who examined the victim girl had given the final opinion/Ex.P12. The Trial Court on the evidence of the victim girl under 164 statement/Ex.P2 as well as on the evidence of the Doctor found that the offence under POCSO Act not made out and hence, acquitted the petitioner for the offence under POCSO Act. He would further submit that the victim girl and the petitioner were in friendly terms which was opposed by the victim girl's family members, namely, P.W.1/mother, P.W.3/father and P.W.7/brother of the victim girl. The other independent witnesses P.W.4 to P.W.6 not supported the case of the prosecution. He further submitted that P.W.1 admits that her daughter P.W.2 was found missing from 23.02.2017 and the complaint was lodged only on 26.02.2017 at about 10.30 p.m. after the victim reached home which would clearly show that to teach a lesson to the petitioner, the complaint was lodged. The victim girl having no other option on the compulsion of her parents deposed against the petitioner. But the victim girl admitted the love affair between them and there was no force or kidnap by the petitioner and the victim girl voluntarily



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went along with the petitioner. In view of the same, the offence under Section 366 IPC would not get attracted and for this offence sentencing the petitioner to maximum period of seven years is not reasonable. Hence, he prayed for suspension of sentence.

6.Learned Additional Public Prosecutor on the other hand submitted that in this case P.W.1/mother of the victim girl lodged a complaint on 23.02.2017 since her daughter was found missing. The victim girl is a minor as could be seen from the evidence of the victim as well as the School Headmistress/P.W.10 and Ex.P8. The victim girl as well her father/P.W.3, mother/P.W.1 and brother/P.W.7 confirmed that the victim was a minor who was taken out from the lawful custody of the parents on the false promise of marriage. The petitioner and the victim girl went to the house of petitioner's sister and since she objected for the same they stayed in a pump room where the petitioner had intimate moments with the victim girl. Thereafter, the petitioner took the victim girl to Hogenakkal and after coming to know that the Police was in search of the victim girl, the petitioner dropped the victim girl in her house on 26.02.2017. Initially, a complaint was received for girl



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missing, enquiry was conducted and on 26.02.2017 FIR was registered.

The delay in registering FIR is only to find out the location of the victim girl. He further submitted that the Trial Court on the evidence of the victim girl as well as the Doctor/P.W.11 acquitted the petitioner for the offence under POCSO Act and had rightly convicted the petitioner for the offence under Section 366 IPC. He would further submit that there is no appeal preferred against the acquittal of the petitioner for the offence under POCSO Act.

7.Considering the submissions made and on perusal of the materials, it is seen that P.W.2/victim girl admits that she was in love with the petitioner and on 23.02.2017 she went along with the petitioner voluntarily on the promise that the petitioner would marry her and finding objection from the petitioner's sister, the petitioner dropped the victim girl near the house of her parents on 26.02.2017. In this case, FIR was registered on 26.02.2017 at 10.30 p.m. after the victim reached home. From the evidence of the victim girl, it is seen that her mother/P.W.1 took her to Sooramangalam Police Station after she came back and thereafter only



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complaint was lodged. The petitioner's contention that the victim girl and the petitioner were in love with each other which was opposed by the victim girl's family members for which a case was registered gains force. Further, as per the prosecution the girl was missing from 23.02.2017 to 26.02.2017, on 25.02.2017 both of them went to Hogenakkal, a tourist spot and on their way, the victim girl admits that she passed through various Police Check post and if she was taken by the petitioner forcibly she would have made complaint. In view of the same, the judgment of the Trial Court sentencing the petitioner to the maximum period of seven years needs re-consideration. Hence, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.

8. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.5,000/- (Rupees Five Thousand only) with two sureties each for a like sum to the satisfaction of the Sessions Judge, Principal POCSO Court, Salem.



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9.Further, the petitioner shall appear before the Trial Court 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.

10.Accordingly, this Miscellaneous Petition is ordered.

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To

- 1.The Inspector of Police,
All Women Police Station,
Sooramangalam, Salem City.
- 2.The Sessions Judge,
Principal POCSO Court, Salem.
- 3.The Superitendent,
Central Prison, Salem.
- 4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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