



WEB COPY



Crl.M.P.No.17992 of 2023
in Crl.A.No.464 of 2023

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M.NIRMAL KUMAR, J.

This criminal miscellaneous petition is filed to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Magalir Neethimandram [Fast Track Mahila Court], Erode in Spl.S.C.No.63 of 2021 dated 20.02.2023 and enlarge the petitioner pending appeal.

2.The petitioner filed a bail application and submitted that in this case, the victim girl is said to have been missing from 16.03.2021, complaint was lodged on 18.03.2021 and FIR/Ex.P13 was registered as 'girl missing'. Later on 20.03.2021 after the arrest of the accused, the case was altered to Sections 3 and 4 of Protection of Children from Sexual Offences Act, 2012 [POCSO Act].

3.The case projected against the petitioner is that P.W.1/mother of the



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victim girl and the petitioner were in friendly terms and the petitioner used to visit P.W.1 regularly, in that manner, P.W.2 came to know about the petitioner. In the absence of P.W.1, the petitioner is said to have committed sexual assault on the victim girl. The petitioner is said to have purchased mobile phone to P.W.2 and they were in regular touch. P.W.1 came to know about the same and finally, the petitioner took the victim girl to Velankanni and to Rameswaram, where the petitioner and the victim girl stayed at Mathi Cottage of P.W.9, where the petitioner committed penetrative sexual assault on the victim girl. Thereafter, on 18.03.2021 they went to Kerala and came back to Erode on 20.03.2021 when the petitioner was arrested.

4.The learned counsel for the petitioner referring to the rough sketch/Ex.P14 submitted that according to them, alteration report/Ex.P20 was made on 20.03.2021 but in Ex.P14 it is seen that it was prepared on 19.03.2021, there is overwriting which shows that section was altered on 19.03.2021. He would submit that P.W.9/owner of Mathi Cottage,



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Rameswaram states that the petitioner and the victim girl came there on 18.03.2021, used the bathroom and left the place within one hour but the case against the petitioner is that on 17.03.2021 the petitioner and the victim girl stayed in Rameswaram and the petitioner committed penetrative sexual assault. He further referring to 164 statement of the victim girl and her evidence, submitted that her statements are with exaggeration and embellishment. P.W.5/Doctor who examined the victim girl issued Accident Register/Ex.P6. He further submitted that in the final opinion/Ex.P8 it is stated that there are no signs of penetration of vagina which would prove the fact that no penetrative sexual assault committed. He would further submit that P.W.8 is the friend of P.W.1 who introduced the petitioner to P.W.1, who admits the relationship between the petitioner and P.W.1, some misunderstanding arose between them, due to which, a false case registered.

5.The learned Additional Public Prosecutor opposed the contention of the learned counsel for the petitioner and submitted that P.W.2 is the victim who clearly state about how she was taken by the petitioner on 16.03.2021



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and they were together till 20.03.2021. During this period, she was subjected to penetrative sexual assault. Further, earlier when the petitioner used to visit her house to meet P.W.1, during the absence of P.W.1 the petitioner used to commit sexual assault. This fact proved by P.W.2 in her 164 statement/Ex.P2 and recorded in Accident Register/Ex.P4. He would submit that the victim girl is 14 years old and the petitioner is 35 years old. The points raised by the petitioner cannot be considered for suspension of sentence. He further submitted that earlier this Court had dismissed the petition for suspension of sentence in Crl.M.P.No.5787 of 2023 dated 20.06.2023 and there is no change of circumstances.

6.Considering the submissions made, it is seen that there are some discrepancies, exaggeration and embellishment with regard to date and manner of commission of penetrative sexual assault, but these factors can be considered at the time of final hearing. Added to it, earlier petition filed for suspension of sentence was dismissed by this Court and there is no change of circumstances. Hence, this Criminal Miscellaneous Petition seeking



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WEB COPY suspension of sentence stands dismissed.

7.The Registry is directed to prepare the typed set of papers and post the main appeal for final hearing on 27.02.2024.

12.01.2024

cse



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