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Crl.MP.No.17732 of 2023
in Crl.A.No.1259 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.17732 of 2023
in Crl.A.No.1259 of 2023

Kangamuthu

...Petitioner/ Appellant

Vs.

The State represented by
The Inspector of Police,
Malliyakarai Police Station,
Salem District
Crime No.287/2020

... Respondent

Prayer :- Criminal Miscellaneous Petition filed under Section 374(2) of Cr.P.C. to suspend the sentence made in judgment in Spl. S.C. No.9 of 2021 dated 16.06.2023 on the file of the learned Sessions Judge, Principal POCSO Court, Salem.

For Petitioner : Mr.W. Camyles Gandhi
For Respondent : Mr.E. Raj Thilak
Additional Public Prosecutor
Assisted by Mr.Aravind,C.

ORDER

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(Order of the Court was delivered by **SUNDER MOHAN, J.**)

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in Spl.S.C.No.9 of 2021 on the file of the learned Sessions Judge, Principal POCSO Court, Salem, dated 16.06.2023 and enlarge him on bail pending disposal of the above Criminal Appeal.

2.The learned Sessions Judge, Principal POCSO Court, Salem, in Spl.S.C.No.9 of 2021, convicted and sentenced the petitioner as follows:

Offence	Sentence Imposed
366 IPC	To undergo seven years Rigorous Imprisonment and to pay a fine of Rs.1,000/- each, in default, to undergo one year Rigorous imprisonment.
343 IPC	A fine of Rs.1,000/- each, in default, to undergo six months Rigorous imprisonment.
Section 9 of Prohibition of Child Marriage Act, 2006	To undergo two years Rigorous imprisonment
Section 5(l) r/w 6 and 5(f) r/w 6 of Protection of	To undergo rigorous imprisonment for life along with fine of Rs.5,000/- each of



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Children from Sexual
offences Act, 2012

the offences, in default to undergo
rigorous imprisonment for one year for
each of the offences

3.Challenging the above conviction and sentence, the petitioner/accused has filed the above Criminal Appeal and he seeks suspension of sentence and bail in the present miscellaneous petition.

4.Heard Mr.W. Camyles Gandhi, learned Counsel appearing for the petitioner and Mr.E. Raj Thilak, learned Additional Public Prosecutor, appearing for the respondent/State.

5. The case of the prosecution is that the petitioner was working as a physical education teacher and was training the victim, who was a State level Badminton player; that he used to take the victim to several places for competition and during such time, he had sexual intercourse with the victim; that the victim's father came to know of this and warned the petitioner and there after, the petitioner had told the victim that he would commit suicide if she did not go with him and thereafter, on 25.09.2020, the petitioner took the victim to the Mariamman Temple and forcibly married her and thereafter, took her to a rented



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house at Salem District and forcibly had sexual intercourse with her on several occasions.

6. The learned counsel for the petitioner submitted that the victim has given different versions at different stages and her evidence cannot be relied upon for convicting the petitioner. The victim had admitted in the cross examination that she never stayed with the petitioner alone in any place at any point of time.

7. The learned Additional Public Prosecutor, per contra, submitted that since the victim was aged 15 years at the time of occurrence, her consent is immaterial and since the prosecution has established that the petitioner had sexual intercourse with the victim, the offence has been made out and opposed the petition for Suspension of Sentence.

8. We have carefully considered the rival submissions and perused the evidence on record. The earliest version of the victim before the Doctor is that she had voluntarily gone with the petitioner and got married to him. In her deposition before the Court, she, however, would state that she was forcibly



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taken by the petitioner and he had forcible sexual intercourse with her. However, in the cross examination, she would state that she had not stayed with the petitioner alone in any place, which is contrary to the prosecution case. We also find that her statement before the learned Magistrate under Section 164 Cr.P.C. is also contrary to her deposition in the the Court. Though we are conscious of the fact that the victim's consent is immaterial since the victim was aged 15 years at the time of alleged occurrence, in view of the different versions of the victim at various stages, which are contrary to each other, it is highly unsafe to hold the petitioner guilty on her evidence. Hence, we are of the view that the petitioner/appellant has a fair chance of success in the appeal. We hasten to add that this is an expression of our prima facie view.

9. Considering the above facts and since the petitioner is in incarceration from 16.06.2023 and the appeal is not likely to be taken up in the near future, we are inclined to suspend the sentence on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-,



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with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Principal POCSO Court, Salem.

- (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;
- (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.

(M.S.R., J.) (S.M., J.)
04.03.2024

bga

Internet : Yes

Index : Yes / No

Note to office : Issue Order Copy on 05.03.2024

Upload the order copy forthwith



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To,

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1. The Sessions Judge, Principal POCSO Court, Salem.
2. The Inspector of Police,
Malliyakarai Police Station,
Salem District
Crime No.287/2020
3. The Superintendent,
Central Prison, Coimbatore.
4. The Public Prosecutor,
High Court, Madras.



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M.S.RAMESH, J.
and
SUNDER MOHAN, J.

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