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Crl.MP.No.346/2023 in Crl.A.No.1256/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.01.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.346/2023 in Crl.A.No.1256/2022

Dhinesh .. Petitioner

Versus

State rep.by
The Inspector of Police
All Women Police Station,
Palladam,
Tiruppur District
(Cr.No.8 of 2019) .. Respondent

Prayer:- Civil Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence imposed in Spl.C.C.No.6 of 2020 dated 30.09.2020 on the file of the learned Sessions Judge (FAC), Magalir Neethimandram (Fast Track Mahila Court), Tiruppur and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.M.N.Balakrishnan

For Respondent : Mr.E.Raj Thilak

Additional Public Prosecutor



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Crl.MP.No.346/2023 in Crl.A.No.1256/2022



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ORDER

[Order of the Court was made by SUNDER MOHAN, J]

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment and order dated 30.09.2020 passed in Spl.C.C.No.6/2020 on the file of the learned Sessions Judge (FAC), Magalir Neethimandram (Fast Track Mahila Court), Tiruppur, and to enlarge the petitioner on bail pending disposal of the appeal.

2. The petitioner, who is the sole accused in the above Sessions Case, was convicted for the offence under Section 366 IPC and Section 5(l) r/w 6 of Protection of Children from Sexual Offences Act, 2012 and sentenced as follows:

Offence under Section	Sentence imposed
366 of IPC	To undergo rigorous imprisonment for ten years along with fine of Rs.1,000/- in default to undergo rigorous imprisonment for one year.
5(l) r/w 6 of POCSO Act	To undergo rigorous imprisonment for life long with fine of Rs.5,000/- in default to undergo rigorous imprisonment for two years.



Crl.MP.No.346/2023 in Crl.A.No.1256/2022

3. Challenging the above conviction and sentence, the petitioner has filed the above Criminal Appeal and he is seeking suspension of sentence and bail in the present petition.

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

5. (i) It is the case of the prosecution that on 13.07.2019 the petitioner had forcibly kidnapped the victim and took her to his aunt's house at Coimbatore and when nobody was their at home, he kissed her and forced her to have sexual intercourse several times; that thereafter on 28.07.2019, the petitioner once again took the victim to the said house and again forcibly had sexual intercourse several times.

(ii) It is the further case of the prosecution that the victim thereafter came to her house and did not complain to her mother; that on 03.10.2019, since the victim did not have mensuration, the victim's mother took her to the hospital and it was found that the victim was pregnant and thereafter, on



Crl.MP.No.346/2023 in Crl.A.No.1256/2022

intimation from the hospital authorities, the respondent police visited the hospital, obtained a statement from the mother of the victim and a case was registered for the offence under Section 366 (A), 506(ii) of IPC and Sections 5(j)(ii),(l) r/w 6 of POCSO Act on the file of the respondent police.

6. Though several grounds have been raised by the petitioner herein, the learned counsel for the petitioner submitted that it is a case of love affair; that the victim has not complained about the alleged acts and that the victim's statement which is given belatedly confirms the said fact. Hence, the learned counsel prayed that the sentence imposed on the petitioner may be suspended.

7. The learned Additional Public Prosecutor per contra submitted that the age of the victim (a minor) has been established by the prosecution and therefore the victim's consent even assuming to be true is not a valid consent; that the petitioner is guilty of the offences charged against him; that the trial Court had rightly convicted the petitioner and hence, prayed for dismissal of the petition.



8. This Court on perusal of the records finds that the petitioner was aged about 22 years at the time of occurrence and the victim was aged 17 years. The occurrence is said to have taken place twice i.e., once on 13.07.2019 and the second time on 28.07.2019, however, no complaint was made by the victim till 12.10.2019, until the FIR was registered on the complaint given by PW2, the mother of the victim. Further, the petitioner is in custody from 30.09.2020.

9. For the aforesaid reasons and taking into consideration the fact that the appeal is not likely to be taken up for final hearing in the near future, we are of the considered view that it is a fit case to grant the relief of suspension of sentence to the petitioner herein.

10. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment is **suspended** and the sentence imposed on the petitioner is suspended 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, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Sessions Judge (FAC), Magalir Neethimandram (Fast Track Mahila Court), 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.

[MSRJ] [SMJ]
10.01.2024

ars

Internet: Yes

Issue order copy by .01.2024
Upload the order forthwith.



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To

- 1.The Sessions Judge (FAC),
Magalir Neethimandram (Fast Track Mahila Court),
Tiruppur.
- 2.The Inspector of Police,
All Women Police Station,
Palladam,
Tiruppur District
- 3.The Superintendent of Prisons,
Central Prison, Cuddalore.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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M.S.RAMESH, J

and

SUNDER MOHAN, J

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