



Crl.M.P.No.18574 of 2023
in Crl.A.No.1337 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.No.18574 of 2023

in

Crl.A.No.1337 of 2023

Pasupathy
S/o.Murugan

... Petitioner

Vs.

State represented by:
The Inspector of Police,
Santhavasal Police Station,
Tiruvannamalai District.
(Crime No.405 of 2018).

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C., to suspend the sentence imposed in Spl.S.C.No.146 of 2019 by the Sessions Judge, Special Court for POCSO, Tiruvannamalai, Tiruvannamalai District on 06.10.2023 and release the petitioner on bail pending disposal of the above appeal.

For Petitioner : Mr.R.Ganesh

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



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ORDER

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This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed in Spl.S.C.No.146 of 2019 by the learned Sessions Judge, Special Court for POCSO Act Cases, Tiruvannamalai, Tiruvannamalai District on 06.10.2023 and release the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused in Spl.S.C.No.146 of 2019 was charged for offences under Sections 294(b), 324, 307 of IPC and Section 9(r) r/w 10 of POCSO Act, 2012 and Section 11(iv)(v) r/w 12 of POCSO Act, 2012. The Trial Court by judgment dated 06.10.2023 acquitted the petitioner for offences under Section 294(b) of IPC and Section 9(r) r/w 10 of POCSO Act and convicted him for offences under Sections 324 and 307 of IPC and Section 11(iv)(v) r/w 12 of POCSO Act and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/- for offences under Sections 324 IPC and Section 11(iv)(v) r/w 12 of POCSO Act, respectively and ten years rigorous imprisonment and to pay a fine of Rs.1,000/- for offence under Section 307 of IPC. Aggrieved against his



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conviction, the petitioner had filed an appeal before this Court in Crl.A.No.1337 of 2023 along with the instant miscellaneous petitions seeking suspension of sentence and bail.

3.The case of the prosecution is that the petitioner, who also hail from the same village of the de-facto complainant/PW1 following her whenever she was going to school and returning home. Whenever the petitioner approaches PW1, she refused his proposals, it was a one sided love. On 14.09.2018, when the victim was proceeding to the Government Higher Secondary School to attend her 12th standard classes along with her friend Sukanya, the petitioner followed her causing trouble and also expressed his love, which the de-facto complainant refused. Getting enraged he pushed down PW1 and inflicted cut injuries on her fore arm. On hearing her alarm, the victim's relative one Ramamurthy came there and rescued the victim girl. Thereafter, she was taken to the Government Hospital, Vellore. PW7 is the Doctor, who examined PW1/victim and gave Accident Register/Ex.P7 and Wound Certificate/Ex.P8. On the complaint of the victim, a case was registered against the petitioner.



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4.During trial, on the side of the prosecution, thirteen witnesses examined as PW1 to PW13 and marked Exs.P1 to P15 and marked material object M.O.1. On the side of the defence no witnesses examined and no documents marked. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, had convicted the petitioner as stated above.

5.The contention of the petitioner is that there is some dispute between the petitioner's family and the de-facto complainant's family. To wreak vengeance, using the de-facto complainant a false complaint has been lodged against the petitioner and the petitioner has been falsely implicated in this case. The complaint itself is a concocted one, which lacks truthfulness. In fact, there was a wordy altercation between the petitioner and the victim girl and thereafter the petitioner was beaten black and blue, suffered injuries, which fact not been narrated neither in the complaint nor in the evidence. Only during cross examination the same elicited. PW7/Doctor, who examined the victim as well as the petitioner. The Accident Register of the petitioner has been marked as Ex.P7. From the Accident Register it is seen



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that four persons have assaulted the petitioner at about same time in the same place and he had suffered serious injuries. This fact not been disclosed by the witnesses. The Investigating Officer though aware about the same, not conducted any investigation in this regard. Before the Lower Court all the witnesses, who are related to the victim have suppressed the real facts and gave false evidence. The Lower Court failed to weigh the evidence in its proper perspective and convicted the petitioner. Further, PW7/Casualty Doctor in his Wound Certificate/Ex.P8 had given an opinion that injuries sustained by the victim is simple in nature but the Trial Court had sentenced the petitioner to ten years rigorous imprisonment for offence under Section 307 of I.P.C. Further submitted that the petitioner has arguable points and fair chance of success in this appeal. Hence, he prays for granting suspension of sentence to the petitioner.

6.The learned Additional Public Prosecutor opposes the contention of the petitioner stating that the victim, a minor girl, while going to school was constantly harassed by the petitioner for one side love. The victim girl refused to talk with the petitioner. On 14.09.2018, when she was proceeding



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along with her classmate Sukanya to the school, she was stopped by the petitioner near the river bridge, the petitioner inflicted cut injuries on her fore arm using knife/M.O.1. The victim was rushed to the Government Hospital, Vellore by PW3/father of the victim. PW2, relative of the victim, who happen to be present at the place, intervened and saved the victim girl. Thereafter, the petitioner was arrested. He had given a confession, on his confession, M.O.1 was recovered. The victim is a minor, which has been proved by the School Certificate/Exs.P9 and P10. He further submitted that the Trial Court on considering the evidence and materials had rightly convicted the petitioner. Hence, prayed for dismissal of the petition.

7.Considering the submissions made and on perusal of the material available on record, it is seen that PW1 states that the petitioner had called her for a talk, which she refused, thereafter the petitioner pushed her down and inflicted cut injuries. PW2, a relative, happened to be there, intervened, saved the victim girl. The evidence between PW1 and PW2 are with contradictions. Further, the petitioner produced before PW7 on the same day at about 10.00 a.m. In the Accident Register it is found that four persons



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beaten him at the same place, and petitioner suffered injuries. This fact suppressed in Ex.P1/complaint and by the witnesses PW1, PW2 and PW13.

PW7/Doctor confirms the examination of petitioner and the victim, the injury sustained by PW1 and issuance of Wound Certificate/Ex.P8. From the Wound Certificate of the victim it is seen that she had suffered simple injury in the fore arm, not on any vital part. In view of the same, this Court finds that the conviction of the petitioner for offence under Section 307 of I.P.C. and sentenced him to ten years imprisonment needs a reconsideration. Further taking note of the fact that there are arguable points involved in this appeal and it would take some time for the appeal to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioner.

8. Accordingly, the reliefs of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal appeal:



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(a) The petitioner/accused 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, Special Court for POCSO Act Cases, Tiruvannamalai.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the Sessions Judge may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioner shall appear before the Trial Court once in three months at 10.30 a.m. on the first working day of the month, 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.



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WEB COPY 9. Accordingly, this Criminal Miscellaneous Petition is ordered.

08.01.2024

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To

- 1.The Sessions Judge,
Special Court for POCSO Act Cases,
Tiruvannamalai.
- 2.The Superintendent,
Central Prison, Vellore.
- 3.The Inspector of Police,
Santhavasal Police Station,
Tiruvannamalai District.
- 4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR., J.

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