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*Crl.M.P.No.18692 of 2023
in Crl.A.No.1396 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2024

CORAM:

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

Crl.M.P.No.18692 of 2023
in
Crl.A.No.1396 of 2023

Sekar @ Gunasekar

... Petitioner

Vs.

State rep. by
The Inspector of Police,
All Women Police Station,
Krishnagiri.
[Crime No.18 of 2021]

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence passed imposed on the petitioner by judgment dated 30.05.2023 made in Special S.C.No.18 of 2022 on the file of the Sessions Judge, Fast Track Mahila Court, Krishnagiri and enlarge the petitioner on bail pending disposal of the above appeal.

For Petitioner : Mr.K.Prabakar

For Respondent : Mr.C.E.Pratap,
Government Advocate (Crl. Side)



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri by judgment dated 30.05.2023 made in Special S.C.No.18 of 2022 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused was convicted by the Trial Court in Special S.C.No.18 of 2022 and sentenced to undergo twenty years rigorous imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo three months simple imprisonment for the offences under Section 16 r/w. 17 of Protection of Children from Sexual Offences Act, 2012 [POCSO Act] and to undergo two years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one year simple imprisonment for the offence under Section 10 of Prohibition of Child Marriage Act. Both the sentences to run concurrently. Against which, the present appeal is filed along with suspension of sentence.



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3.The case of the prosecution is that the victim girl/P.W.2 was found missing on 24.09.2021. P.W.1/father of the victim was informed by P.W.3/mother of the victim girl that their minor daughter was found missing. Prior to it, A1, who is residing near the victim girl's house, got acquainted with the victim girl and taking advantage of the tender age of the victim girl, he used to meet her and developed a love relationship which is warned by the defacto complainant and his family members. But A1 continued to entice the victim girl in the pretext of love for the past four years and finally, on 24.09.2021 the victim girl was found missing. Later on enquiry, it came to know that A1 along with his family members and friends took the victim girl in a bike to Kaveripattinam, from there to Papanasam, Thanjavur District where the petitioner/A2 was working in a Bakery and stayed there from 25.09.2021 to 27.09.2021. In the meanwhile, A1 took the victim girl to Vinayagar Temple, tied a Thali and committed aggravated penetrative sexual assault on the victim girl in the house of the petitioner/A2. The victim girl though resisted but she was unable to do anything. However, the parents and relatives of A1 supported the act of A1. Thereafter, on



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coming to know about registration of the case, the victim girl was dropped near Marriamman Temple in their native. The victim girl's parents took her home and enquired her. The victim girl informed that on that day, she had gone to attend nature's call, at that time, A1 along with others came there, shut her mouth and by placing a handkerchief with some sedative, she became unconscious and took her to Papanasam, Thanjavur District which she later realized.

4.On 27.09.2021, complaint was lodged and a case in Crime No.18 of 2021 was registered for the offence under Sections 363, 366 IPC, Section 5(l) r/w. 6 of POCSO Act and Sections 9 and 10 of Prohibition of Child Marriage Act. Thereafter, P.W.16/Investigating Officer took up the investigation, visited the scene of occurrence, prepared observation mahazar and rough sketch, enquired the victim girl, her parents, relatives and others. The victim girl was produced before the P.W.8/Doctor at Government Hospital, Krishnagiri, who examined her and issued Accident Register/Ex.P6, Forensic report/Ex.P7 and medical report/Ex.P8. Thereafter, A1 was arrested who confessed kidnapping and committing



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penetrative sexual assault on the victim girl. The accused was produced before P.W.10/Doctor, who examined him and issued potency certificate/Ex.P10. The victim girl in her 164 statement confirmed the kidnap and penetrative sexual assault by the petitioner. Later, on coming to know about registration of the case, the petitioner/A2 surrendered on 01.12.2021. On completion of investigation, charge sheet filed before the Trial Court.

5.Before the Trial Court, on the side of the prosecution P.W.1 to P.W.16 examined, Ex.P1 to Ex.P21 and M.O.1 marked. On the side of the petitioner/accused, no witnesses examined and no exhibits marked. On conclusion of the trial, the Trial Court convicted the petitioner as stated above.

6.The contention of the learned counsel for the petitioner is that the petitioner was arrayed as A2, who is working in a bakery at Papanasam and he is a native of A1's village. He would submit that A1 and the victim girl were in love with each other which is their independent act and the petitioner



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has got nothing to do with the same. In this case, P.W.1 and P.W.3 are the father and mother of the victim girl/P.W.2, P.W.4 is the maternal grandfather of P.W.2, P.W.5 is the brother of P.W.1, P.W.7 is the father of P.W.1, P.W.11 is the cousin of P.W.1, P.W.12 and P.W.14 are the relatives of P.W.1. None of the witnesses state anything about the petitioner, the only witness who speaks about the petitioner is P.W.2/victim girl, who states that it was A1 who took her to Papanasam where they stayed in the house of the petitioner/A2, at that time, both A1 and the victim girl acted on their own. He would further submit that through P.W.6 the prosecution attempted to show that the petitioner and P.W.6 are neighbours residing at Papanasam where A1 and the victim girl were staying, but P.W.6 not supported the case of the prosecution. In view of the same, there is no material against the petitioner/A2, but the Trial Court failed to consider these aspects, convicted the petitioner/A2. He further submitted that P.W.1 to P.W.3 in their statements state about the love affair between A1 and the victim girl, opposition shown by P.W.1 and P.W.3, thereafter the parents of A1 getting offended, took the victim girl and conducted marriage with A1. The victim girl in her 164 statement clearly state about her love relationship with A1



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and she voluntarily joined him. Thus, the petitioner/A2 has nothing to do with the act of A1 and the victim girl. He further submitted that it has been projected that the Vinayagar temple where A1 tied the Thali [M.O.1] on the victim girl was near the house of A2 but from the rough sketch it is seen that there is no such temple near the house of the petitioner/A2.

7.The Government Advocate [Crl. Side] submits that on the complaint of the defacto complainant/P.W.1, a case was registered. The victim girl and A1 are residing in the same village, the victim girl is a minor and taking advantage of the same, A1 enticed her and forcibly took her to Papanasam to the house of A2 where M.O.1/Thali was tied in a Vinayagar Temple. Thereafter, both the victim girl and A1 stayed there for two days and at that time, A1 committed penetrative sexual assault on the victim girl. On coming to know about the search for them, A1 dropped the victim girl near her house. The victim girl informed her parents that during the night hours on 24.09.2021, when she went out to attend the nature's call A1 along with others shut her mouth by placing a handkerchief with sedative, which made her unconscious and thereafter, she was taken to Papanasam. P.W.4 and



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other Villagers confirmed the kidnap by A1. P.W.8 examined the victim girl and issued Accident Register and medical report/Ex.P8 confirming that hymen was not intact. P.W.13/Headmistress issued the school certificate confirming that the victim girl is a minor. The Investigating Officer examined the witnesses, recorded the statements, collected documents and on conclusion of investigation, charge sheet filed against the petitioner and A1. On conclusion of trial, the trial Court convicted the petitioner as stated above. Hence, prays for dismissal.

8.Considering the submissions made and on perusal of the materials, it is seen that A1 and the victim girl took asylum in the house of petitioner/A2, who is working in a bakery in Papanasam, thereafter A1 took the victim girl to Vinayagar temple and tied a Thali. P.W.6 is the only witness from Papanasam who had stated that A1 and the victim girl were staying in the house of the petitioner/A2 but not supported the case of the prosecution. Further, except P.W.6 no other witness speaks about the happenings in Papanasam. In view of the same, the conviction of the petitioner needs re-look and re-consideration. Hence, this Court is inclined



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to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.

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9. 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.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri.

10. Further, the petitioner shall appear before the Trial Court on the first working day 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.



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11. Accordingly, this Miscellaneous Petition is ordered.

29.01.2024

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Note: Issue order copy on 30.01.2024

To

1. The Inspector of Police,
All Women Police Station,
Krishnagiri.
2. The Sessions Judge,
Fast Track Mahila Court,
Krishnagiri
3. The Superintendent,
Central Prison, Vellore.
4. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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