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*Crl.M.P.No.19084 of 2023
in Crl.A.No.1453 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2024

CORAM:

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

Crl.M.P.No.19084 of 2023

in

Crl.A.No.1453 of 2023

1. Palaniyandi Murugan
2. Latha
3. Balachandar

... Petitioners

Vs.

The Inspector of Police,
All Women Police Station,
Ariyalur.
(Crime No.20 of 2021)

... Respondent

PRAYER: Criminal Miscellaneous Petitions filed under Sections 389(1) of Cr.P.C to suspend the sentence imposed in Spl.SC.No.49 of 2021 on the file of the Sessions Judge, Fast Track Mahila Court, Ariyalur dated 06.11.2023.

For Petitioners : Mr.B.Kumarasamy

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



*Crl.M.P.No.19084 of 2023
in Crl.A.No.1453 of 2023*

WEB COPY

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioners/A2 to A4, seeking to suspend the sentence of imprisonment imposed on them in Spl.S.C.No.49 of 2021 by a judgment dated 06.11.2023 on the file of the learned Sessions Judge, Fast Track Mahila Court, Ariyalur and to enlarge the petitioners on bail pending disposal of the above Appeal.

2. The petitioners/A2 to A4 in Spl. S.C.No.49 of 2021 were found guilty for the offence under Section 10 of PCM Act and Section 6 r/w Section 17 of POCSO Act and the petitioners were sentenced to undergo 2 years imprisonment each and to pay a fine of Rs.5,000/- each and in default to undergo 6 months simple imprisonment each for the offence under Section 10 of PCM Act and to undergo 20 years rigorous imprisonment each and to pay fine of Rs.10,000/- each, in default to undergo one year simple imprisonment each. Aggrieved against the same, the present appeal has been filed by the petitioners/A1 to A4. The present miscellaneous petition filed by the petitioners/A2 to A4 seeking suspension of sentence and bail.

3. During trial, on the side of the prosecution, PW1 to PW16 examined and marked Exs.P1 to P13 and 3 Material objects. On the side of the defence,



*Crl.M.P.No.19084 of 2023
in Crl.A.No.1453 of 2023*

WEB COPY

no witnesses examined and no document was marked. As a Court document, Ex.C1 has been marked. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, had convicted the petitioners/A2 to A4 as stated above.

4. The contention of the learned counsel for the petitioner is that A1 in this case and PW1/victim were having love affair with each other and they were found very close, when nobody was at home in the house of PW1/victim, which was noticed by the mother of the victim, and made hue and cry and all the villagers assembled. Thereafter, on undertaking that A1 would marry the victim girl and on the advice of the villagers, A1 and PW1 marriage was solemnised in a temple. PW2/mother of the victim girl was not agreeable to the same and lodged a complaint against 10 persons including A1-PW1's lover, A2 to A4-family members of A1 and A5 to A10-Villagers. All the accused were prosecuted and finally the Trial Court while acquitting A5 to A10, convicted the petitioners/A2 to A4 as stated above. The learned counsel further submits that except the petitioners being the family members of A1, they also stand in the same footing as that of the acquitted accused A5 to A10. Admittedly, in this case, the petitioners A2 to A4 were not present in the house when the alleged occurrence said to have taken place. Hence, he



*Crl.M.P.No.19084 of 2023
in Crl.A.No.1453 of 2023*

prays for granting suspension of sentence to the petitioners.

5. The learned Government Advocate (Crl. Side) on the other hand filed his counter and submitted that the case of the prosecution is that on 09.07.2021, the defacto namely Jothika, aged about complainant/victim 15 years, DOB: 22.05.2006. The victim and A-1 are neighbor. A-2 and A-3 are parents and A-4 is a brother of A-1. A-5 to A-10 the Village Head Persons, the victim and A-1 had the love affair during her 9th standard, which was condemned by victim parents. Thereafter, A-1 compelled the victim and restore his love affair. One day. A-1 came to the victim's house and talked each other, which was seen by her mother and locked the door and called the village president and A-5 to A-10. The president scolded the victim and A-1 and refused to solemnize the marriage. But A-2 to A-10 compelled the victim for marriage, on 23.05.2021 at about 12.30 P.M., at Mariamman Koil Kundhapuram, in front of A-2 to A-10, A-1 tied a Thali to victim. Then the victim was stayed in A-1 house and A-1 had sexual intercourse with the victim. A-2 and A-3 harassed the victim by the reason of her parents have not presented the stridhan to the marriage and sent out from the home on 08.07.2021. So the victim left the home. Hence the complaint.

5.1. It is submitted that based on the above complaint, a case was



*Crl.M.P.No.19084 of 2023
in Crl.A.No.1453 of 2023*

WEB C

registered in All Women Police Station, Ariyalur, Crime No.20 of 2021 U/s.376(ii) IPC and sec.5(1), 6, r/w.17 of POCSO Act and sec.9 & 10 of Child Marriage Act on 09.07.2021 Lat about 08.00 hours I by Tmt. Lakshmi Priya, the then Sub Inspector of Police and submitted before Tmt.Anitha Arockiyamary, the then Inspector of Police and she took up the case for investigation.

5.2. It is submitted that during the course of investigation, the then Inspector of Police went to the scene of occurrence, drew the rough sketch, prepare an observation mahazar in the presence of witnesses and examined the witnesses and recorded their statements.

5.4. It is submitted that during trial, the prosecution has examined 16 witnesses and marked 13 exhibits and no material objects were marked. On defence side no witness, no exhibits and one material object were marked.

5.5. PROSECUTION SIDE WITNESSES :-

P.W.1	Victim Girl	Deposed the incident happened to her and lodged a complaint before the respondent police[Ex.P.1]
P.W.2	Mother of the victim	Corroborated the same version of P.W.1
P.W.3	Tr.Backiyaraj/ Observation	Treated as Hostile



*Crl.M.P.No.19084 of 2023
in Crl.A.No.1453 of 2023*

WEB COPY

	Mahazar witness	
P.W.4	Tr.Prasanth/ Observation Mahazar witness	Deposed that he attested in the observation mahazar [Ex.P.3]
P.W.5	Tr.Govindhan Observation witness Mahazar	Treated as Hostile
P.W.6	Tr.Saravanakumar	Treated as Hostile
P.W.7	Tr.Balakrishnan	Treated as Hostile
P.W.8	Tmt.Pappathi	Treated as Hostile
P.W.9	Victim's School Head Master	Deposed that as per the requisition officer, he of investigation issued school certificate of victim [Ex.P.5]
P.W.10	Dr.Jayasudha	Deposed that as per the requisition of investigation officer, she examined accused and issued a medical report [Ex.P.6]
P.W.11	Tr.Karuppaiya Observation Mahazar witness	Treated as Hostile
P.W.12	Dr.Malathi	Deposed that as per the requisition of investigation officer, she examined the victim and issued A.R. Copy [Ex.P.8]
P.W.13	Tr.Sakthivel /Maternal Uncle of victim	Deposed that he took the victim to his house for 3 months and he came to know that A-1 married P.W.1 through his sister P.W.2



*Crl.M.P.No.19084 of 2023
in Crl.A.No.1453 of 2023*

WEB COPY

P.W.14	Tmt.Lakshmipriya Inspector of Police	Sub	Deposed that she received the complaint and registered a case [Ex.P.9)
P.W.15	Tmt. Anith Arockiyamary/ Inspector of Police		Deposed that she took up the case for investigation and went to the scene of occurrence and drew rough sketch (Ex P.10] and observation mahazar in the presence of witness (Ex.P.3) and examined the witnesses and recorded their statements and arrested the accused and remanded him into Judicial custody.
P.W.16	Tmt. Mahalakshmi Inspector Police		Deposed that she took up the of case for investigation and went to the scene of occurrence and drew rough sketch [Ex.P.12] arid examined the witnesses and recorded their statements and complete the investigation and filed a charge sheet before the competent court in accordance with law.

5.6. It is submitted that during 313(1)(b) Cr.PC. questioning about the incriminating the evidences adduced by the prosecution witnesses, the accused denied the entire case as false.

5.7. It is submitted that after conclusion of due trial, the trial court by



*Crl.M.P.No.19084 of 2023
in Crl.A.No.1453 of 2023*

its judgment in Spl.S.C.No.49 of 2021 dated 06.11.2023 on the file of learned Sessions Judge, Fast Track Mahila Court, Ariyalur convicted the Petitioners / Appellants / Accused 2 to 4 and sentenced them as follows:-

A-2 to A-4	u/s. 10 of Child Marriage Act	Sentenced them to undergo 2 years Rigorous Imprisonment with fine Rs.5,000/- Simple Imprisonment I/d.6 months
A-2 to A-4	u/s.6 r/w.17 of POCSO Act.	Sentenced them to undergo 20 years Rigorous Imprisonment with fine Rs.10,000/- 1/d.1 year Simple Imprisonment

5.8. It is submitted that based on the evidence of the prosecution witnesses supported by the prosecution exhibits, the trial court rightly convicted the Petitioners/Appellants/ Accused [A-2 to A-4]. The prosecution has proved each and every circumstances pointing to the guilt of the accused and the prosecution have proved the case beyond all reasonable doubts. From the date of conviction (i.e) 06.11.2023 the Petitioners/Appellants/Accused (A2 to A4) are confined in Central Prison, Coimbatore. Hence, prays for dismissal of the petition.



*Crl.M.P.No.19084 of 2023
in Crl.A.No.1453 of 2023*

WEB COPY

6. In this case, PW1 and PW2 have not deposed against the petitioners herein, who are A5 to A10 and the petitioners are similarly placed. Except PW1 and PW2, all other witnesses of the village viz., PW3, PW5, PW6, PW7, PW8 and PW11 not supported the case of the prosecution. The evidence of PW1 and PW2 are doubtful, which are in the nature of pick and choose in implicating the petitioner. Considering the fact that there is no material to show that the petitioners/A2 to A4 had known about the love affair between the victim and A1 and they abetted A1 in any manner, hence, this Court is inclined to suspend the sentence imposed on the petitioners/A2 to A4.

7. Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal Appeal:

(a) The petitioners/A2 to A4 are ordered to be enlarged on bail, on condition that they shall execute a separate bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each, with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Fast Track Mahila Court, Ariyalur. Since all the petitioners hail from



WEB COPY



*Crl.M.P.No.19084 of 2023
in Crl.A.No.1453 of 2023*

the same family, common sureties can be accepted.

(b) The petitioners/A2 to A4 and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Judge may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioners/A2 to A4 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 they are not able to appear before the Trial Court on that day, they 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 her absence as directed by the Trial Court.

8. Accordingly, this Criminal Miscellaneous Petition is ordered.

05.03.2024

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To

1.The Inspector of Police,
All Women Police Station,
Ariyalur.

2.The Sessions Judge
Fast Track Mahila Court, Ariyalur.



*Crl.M.P.No.19084 of 2023
in Crl.A.No.1453 of 2023*

WEB COPY

3.The Superintendent,
Central Prison,
Trichy.

4.The Public Prosecutor,
High Court, Madras.



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*Crl.M.P.No.19084 of 2023
in Crl.A.No.1453 of 2023*

M. NIRMAL KUMAR, J.

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Crl.M.P.No.19084 of 2023
in Crl.A.No.1453 of 2023

05.03.2024