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Crl.M.P. No. 19571 of 2023
in
Crl.A. No. 1569 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2024

CORAM

THE HON'BLE MR.JUSTICE M. NIRMALKUMAR

Crl.M.P. No. 19571 of 2023

in

Crl.A.No. 1569 of 2023

Ayyappan

..Petitioner

Vs.

State by:

The Inspector of Police,
All Women Police Station,
Chengam, Thiruvannamalai District,
Cr.No. 1 of 2021.

..Respondent

Prayer: Petition to suspend the sentence imposed on the petitioner by judgment dated 19.10.2023 in Spl.S.C. No. 37 of 2021 by the learned Sessions Judge, Special Court for POCSO Act cases, Thiruvannamalai, Thiruvannamalai District and release the petitioner on bail pending disposal of the above criminal appeal.



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For Petitioner :: Mr.A. Balamurugan
For Respondent :: Mr.R. Vinothraja
Govt. Advocate (Crl.Side)
O R D E R

The petitioner/A1 in Special S.C. No. 37 of 2021 was convicted by the Trial Court by judgment dated 19.10.2023 for the offences under Sections 450 and 376(2)(n) IPC and Section 5(I) r/w Section 6 of POCSO Act, 2012 and sentenced to undergo rigorous imprisonment for 10 years together with a fine of Rs.5000/- carrying a default sentence of simple imprisonment for one year for the offence under Section 450 IPC and for the offence under Section 376(2)(n) IPC and Section 5(I) r/w Section 6 of POCSO Act, he was sentenced to undergo rigorous imprisonment for 20 years, to pay a fine of Rs.5000/- carrying a default sentence of one year simple imprisonment. Aggrieved against the said conviction and sentence, the petitioner has preferred the present appeal along with this petition seeking suspension of sentence and bail.

2. P.W.2 is the victim in this case. Learned counsel for the



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petitioner submitted that P.W.2, in her evidence had admitted that she and the petitioner were in love with each other and they were in good relationship for more than four years. P.W.2 has also confirmed this fact before P.W.s 7 and 9, doctors, who examined her. Further, according to the learned counsel, P.W.2 admits that she does not have a birth certificate and her age given in school is only her approximate age. P.W.5, the brother of the victim also confirms the same. P.W.6, the Headmaster of the School in which the victim girl was studying states that he had produced the school certificate with regard to the age of the victim registered in the School Register and he had deposed that there was no birth certificate of the victim girl available in the school records. According to the prosecution, the age of the victim girl was 16 years and 7months at the relevant point of time. However, learned counsel would submit since there is no concrete evidence with regard to the actual age of the victim girl, she cannot be treated as a minor. Further, according to the learned counsel, the petitioner was given to understand that P.W.2 is a major and their relationship was a conscious and a consensual one. In such circumstances, the petitioner cannot be termed to



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have committed any offence. He would also submit that earlier to this complaint, P.W.2 had lodged a complaint with Chengam All Women Police Station for the reason that the petitioner was not willing to marry her after having a relationship with her and on the advice of the Police, the complaint was withdrawn. Learned counsel has brought to the notice of this Court that the petitioner has recently married a deaf and dumb girl and has got an infant aged less than a year out of the said wedlock. Hence, the learned counsel prayed for grant of suspension of sentence.

3. On the other hand, learned Government Advocate (Crl.Side) would submit that P.W.2, along with her mother P.W.1, had appeared before All Women Police Station, Chengam and lodged a complaint. She had narrated the relationship between her and the petitioner and that it had lasted for quite some time. Initially, the petitioner had refused his advances. Subsequently, the petitioner had forcibly entered the house of the victim and committed penetrative sexual assault and later, on the promise made by the petitioner that he will marry her, the relationship continued. However, on coming to know that the victim belongs to a different community, the



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petitioner refused to marry the victim, which resulted in a complaint being lodged before the Police. On the petitioner giving an undertaking that he would marry the victim girl, that complaint was not entertained. Soon after, the victim girl, realising that the petitioner had given a false promise to marry her before the Police only to wriggle out of the situation, the present complaint came to be lodged. The case was registered in Crime No. 1 of 2021 and the petitioner came to be arrested and he admitted his guilt. Before the Trial Court, P.W.s 1 to 11 were examined and Exs. P1 to P14 were marked. P.W.5 is the brother of the victim girl. P.W.6 is the Headmaster, who had confirmed the victim girl to be a minor. P.W.s 7 and 9 are Doctors, who examined the victim and to them, the victim girl had informed about the physical relationship between her and the petitioner for quite some time. According to the learned Government Advocate (Crl.Side), the medical report is in conformity with the version of P.W.2, victim girl. The petitioner/accused had examined himself as D.W.1 and marked Exs.D1 to D4 to project a case of alibi, which was rightly rejected by the Trial Court. Hence, the learned Government Advocate would pray for



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dismissal of the petition for suspension of sentence.

4. Considered the submissions and perused the materials on record.

5. It is seen that the petitioner and the victim girl were in love with each other and it was a conscious and consensual relationship. The victim girl admits that she had physical relationship with the petitioner, not once, but on several occasions over a period of four years. This has been confirmed in the evidence of P.W.s 7 and 9. The victim girl's age is only an approximate one and she has admitted that she does not have her birth certificate. Her brother P.W.5 also confirms the same. According to the petitioner, he was given to understand the victim girl was a major and they were intending to marry, but due to social disparity, the marriage could not happen. Further, the petitioner now married a deaf and dumb girl and has a one year old child out of the said wedlock. For the aforesaid reasons, the conviction of the petitioner needs reconsideration and this Court is inclined to suspend the sentence and enlarge the petitioner on bail.

6. Accordingly, the relief of suspension of sentence and bail are



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granted on the following conditions till the disposal of the above Criminal

Appeal:

(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, Thiruvannamalai, Thiruvannamalai District.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the Trial Court 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 on the first working day of every English Calendar 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 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



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as directed by the Trial Court.

7. The criminal miscellaneous petition is ordered accordingly.

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nv

M. NIRMALKUMAR,J.

nv

To

1. The Special Court for POCSO Act cases, Thiruvannamalai, Thiruvannamalai District.
2. The Inspector of Police, All Women Police Station, Chengam, Thiruvannamalai District.
3. The Superintendent, Central Prison, Vellore.
4. The Public Prosecutor, High Court, Madras.

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