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Crl.M.P.No.19726 of 2023
in Crl.A.No.1611 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2024

CORAM:

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

Crl.M.P.No.19726 of 2023

in

Crl.A.No.1611 of 2023

Udhayakumar
S/o.Periyadurai

... Petitioner/A1

Vs.

State by
Inspector of Police,
Eriyur Police Station,
Eriyur, Dharmapuri District.
(Crime No.123 of 2016)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) and 439 of Cr.P.C to suspend the sentence imposed on petitioner/appellant by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Dharmapuri in Special S.C.No.2 of 2023 by judgment dated 28.11.2023 and enlarge the petitioner on bail, pending disposal of the above Criminal Appeal.

For Petitioner : Mr.M.R.Jothimanian

For Respondent : Mr.R.Kishore Kumar

Government Advocate (Crl. Side)



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence of imprisonment imposed on him in Spl.S.C.No.2 of 2023 by a judgment dated 28.11.2023 passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Dharmapuri and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/A1 was tried along with three others A2 to A4 in Spl.S.C.No.2 of 2023. The trial Court, by judgment dated 28.11.2023, acquitted A2 to A4 and convicted the petitioner/A1 for offence under Sections 366 IPC and 5(l) r/w 6 of POCSO Act, 2012 and sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.5,000/- for offence under Section 366 IPC, ten years rigorous imprisonment and to pay a fine of Rs.10,000/- for offence under Sections 5(l) r/w 6 of POCSO Act,



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2012, against which, the petitioner preferred a appeal in Crl.A.No.1611 of 2023 before this Court along with suspension of sentence petition.

3.During trial, on the side of the prosecution, PW1 to PW22 examined and marked Exs.P1 to P25 and marked material object M.O.1. On the side of the defence, no witnesses examined and marked Ex.D1. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, had convicted the petitioner as stated above.

4.The contention of the learned counsel for petitioner is that the victim girl and the petitioner were in love with each other. The victim girl used to visit her grandmother's house where the petitioner was residing. The victim showed her interest towards the petitioner and compelled him to fall in love with her. The petitioner at that age not knowing the seriousness and consequences, developed relationship with the victim girl. Later the victim's parents were searching for bridegroom against her wish and hence she forced



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the petitioner to join with her otherwise she would ended her life. Further it is submitted that the victim girl informed the petitioner as she is major and she is agreeable with the marriage, thereafter only the petitioner was forced to accompany the victim girl and due to the adolescent age they had a marriage and also had physical relationship. The petitioner and the victim girl were stayed in petitioner's friends/A3 & A4's house for quite some time and it was all with the concurrence of the victim. Thereafter when the victim's parents found that the petitioner and the victim are in the relationship of brother and sister and they cannot live as husband and wife, a complaint has been lodged and now the petitioner had been made as a scapegoat. The victim in her evidence admits the relationship between the petitioner and herself and also admits Ex.D1 letter has been written by her.

4.1. The learned counsel for petitioner further referring to Ex.D1 states that it is explicit that the petitioner and the victim were not aware about the prohibitory relationship and they loved each other and it is on the



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compulsion of the PW3/victim the petitioner is now in trouble. He further submitted that petitioner's mother is suffering from Cancer and her days are counted. The petitioner has to visit his mother to aid her for her medical treatment. 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.

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 21.05.2016 at about 18.00 hours, the de-facto complainant namely Tr.Saravanan, lodged a complaint before the respondent police by stating that he is residing at Pennagaram Taluk, Dharmapuri District and he is an agriculturist. The de-facto complainant's daughter/victim girl, aged about 15 years, is studying 11th Standard at MAM School at Mettur. On 18.05.2016 at about 10 p.m., when the victim girl was in her house, the accused



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Udhayakumar/A1 came there and kidnapped the victim girl from the lawful guardianship of her parents through bike bearing Reg. No.TN-29- BC-9529, which was belongs to the complainant and also taken 5 ½ sovereigns of gold from the complainant's house. Hence the complaint.

5.1. He further submitted that based on the above complaint, a case was registered in Eriyur Police Station, in Crime No.123 of 2016 under Section 366(A) IPC against the accused on 21.05.2016 at about 18.00 hours, by Tr.V.Kamalanathan, the then Sub Inspector of Police and submitted before Tr. Poulouse, the then Inspector of Police for further investigation. During the course of investigation, the then Inspector of Police went to the scene of occurrence and drew rough sketch and prepared observation mahazar in the presence of witnesses and examined the witnesses and recorded their statements. Thereafter, the then Inspector of Police have arrested the accused Udhayakumar/A1 and secure the victim girl at Salem Bus Stand and recorded confession statement from A1 and produced him before the Judicial



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Magistrate Court, Pennagaram and remanded him into Judicial custody.

Then, the then Inspector of Police recorded 161 Cr.P.C. statement from the victim girl, which reveals that the accused A1 is relative of the de-facto complainant. The victim girl studied 9th and 10th by staying in her grandmother's house at Neruppur. At that time she talked with A1 and they got acquaintance. Like that they got friendship for two years. On 18.05.2016, A1 asked the victim girl to write a letter and come with him. As such the victim girl wrote a letter and kept in her house and gone with A1. From Neruppur they proceeded in a bike to Madurai, the accused Latchumanan/A2, who is friend of A1 came and took them to his friends A3/Valarmathi's house at Thirupasethi. On 19.05.2016 A3 conducted the marriage of the victim girl and A1, at his house. There A1 had forcible sexual intercourse with the victim girl. There they stayed for 17 days. Then A3's friend, A4/Raja, took A1 and the victim girl to another village and they stayed for four days.



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5.2. He further submitted that based on the confession statement of victim girl, on 10.06.2016, the then Inspector of Police has altered the section of this case into Section 366(A), 376 IPC and 5(1) r/w 6 of POCSO Act, 2012. On 10.07.2016, the 164 (5) Cr.P.C statement of the victim girl was recorded by the Judicial Magistrate Pennagaram. Based on the 164 (5) Cr.P.C statement of victim girl, the then Inspector of Police has altered the section of this case into Section 366(A), 376, 506(1) & 109 IPC and sec.5(1), 6 of POCSO Act and Sec.9, 10 of Prohibition of Child Marriage Act. Thereafter, the then Inspector of Police arrested the accused A2 on 22.07.2016 and arrested the accused A3 & A4 on 23.07.2016 and they were produced before the Judicial Magistrate, Pennagaram and remanded to judicial custody. After completion of investigation, based on the witnesses statement, on 03.08.2016, the then Inspector of police filed a charge sheet before the Fast Track Mahila Court, Dharmapuri and the same was taken on file vide Spl.S.C.No.14/2016. Then, this case was transferred to Special Court for Exclusive Trial of Cases



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under POCSO Act, Dharmapuri and the same was renumbered as Spl.S.C.No.2/2023.

5.3. He further submitted that the trial court framed charges against the accused. During trial, the prosecution has examined 22 witnesses and marked 25 exhibits and identified 1 material object. On defence side, examined 1 witness, no exhibits and no material object marked. After conclusion of due trial, the trial court by its judgment in Spl.S.C.No.2 of 2023, dated:28.11.2023 convicted the Appellant/Accused-1 as stated above. Hence, prays for dismissal of the petition.

6.Considering the submissions made and on perusal of the material available on record, it is seen that from Ex.D1 it is clear that PW3/Victim forced the petitioner to join her and further in this case it is seen the PW1 and PW2 are uneducated. Their evidence is that there is no birth certificate, PW12/Head Master of the victim's school had recorded the age of the victim.



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In view of the same, this Court finds that the finding of the Court below needs to be reconsidered. In view of the same, this Court is inclined to suspend the sentence imposed on the petitioner.

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 petitioner/A1 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 Exclusive Trial of Cases under POCSO Act, Dharmapuri.

(b) The petitioner/accused 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.



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(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.

8. Accordingly, this Criminal Miscellaneous Petition is ordered.

01.03.2024

rsi

To

1. Inspector of Police,
Eriyur Police Station,
Eriyur, Dharmapuri District.

2. The Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act,
Dharmapuri.



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M. NIRMAL KUMAR, J.

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3.The Superintendent,
Central Prison,
Vellore.

4.The Public Prosecutor,
High Court, Madras.

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