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Crl.M.P.No.384 of 2024 in Crl.A.No.49 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.384 of 2024 in
Crl.A.No.49 of 2024

Manikandan

... Petitioner

Vs.

State by Inspector of Police,
All Women Police Station,
Tiruppur North,
Tiruppur City.
(Crime No.1/2022).

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) the Code of Criminal Procedure, to suspend the sentence imposed on the petitioner in Spl.S.C.No.36 of 2022 on the file of the Mahalir Neethimandram, Tiruppur, dated 22.02.2023 and release the petitioner on bail pending disposal of the above appeal.

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

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Tiruppur, dated 22.02.2023 in Special S.C.No.36 of 2022.



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2.The conviction and sentence imposed on the petitioner are as follows:

- For offence under Section 9(i) r/w 10 of the Protection of Children from Sexual Offence Act, 2012, the petitioner to undergo five years Rigorous Imprisonment and to pay a fine of Rs.2,000/-, in default to undergo six months Rigorous Imprisonment.
- For offence under Section 506(i) of IPC, the petitioner to undergo six months Rigorous Imprisonment.

3.The learned counsel for the petitioner submitted that PW1 is the victim girl and daughter of the petitioner. PW1 stated that on 15.07.2021, the petitioner is said to have molested her and kissed on her private parts. On 20.07.2021, she attains puberty and for sometime, the petitioner not made any mischief with her. During the month of December 2021, when the victim girl came from the function and staying at home, the petitioner is said to have made mischief activities with his daughter/victim girl. The learned counsel further submitted that the petitioner, his wife/PW2 and the victim girl/PW1 used to live in the same roof, which is one room house and they used to sleep together. In such circumstances, the petitioner would not have committed the act as projected against him. PW1, the victim girl as well as her mother/PW2 admitted that there was constant fight between the petitioner and PW2 on



several occasions. Prior to the occurrence, PW2 lodged a complaint against the petitioner for drunkenness and picking up fight. To get rid from the petitioner, a false complaint lodged against him. In this case, PW2's evidence is that on 02.01.2022, she was informed about the incident by his daughter/PW1 and from 02.01.2022 to 08.01.2022, both were living together normally. She further submitted that the explanation given for the delay is that since PW2 sister's husband gone to Sabarimalai temple, she was waiting for him to come back and thereafter, lodged the complaint, is highly doubtful. PW2 clearly admits that she was surviving food and living a normal life with the petitioner as husband and wife.

4.The learned Additional Public Prosecutor appearing for the respondent Police submitted that the petitioner is the father of victim girl. On 15.07.2021, when the victim girl was in alone in house, the father of the victim/petitioner came to victim girl and touched the breast and also licked the private parts. Thereafter, the petitioner threatened the victim girl not to disclose the matter to anyone with dire consequences. Based on the complaint (Ex.P2), a case was registered in Crime No.1 of 2022 for offence under Sections 7 and 8 of the Protection of Children from Sexual Offence Act, 2012 and 506 (ii) IPC on 08.01.2022. During the course of investigation, the Inspector of Police went to



the scene of occurrence, drew rough sketch (Ex.P7), prepared observation mahazar (Ex.P4) in the presence of witnesses, examined the witnesses and recorded their statements, arrested the petitioner, recorded his confession statement and remanded him into Judicial custody. After completion of elaborate and detailed investigation, the Inspector of Police filed a charge sheet. During trial, on the side of the prosecution, seven witnesses examined as PW1 to PW7 and seven documents marked as Exs.P1 to P7. On the side of defence, the petitioner examined himself as DW1, but no document marked. After completion of trial, the trial Court convicted the petitioner as stated above.

5.Considering the submissions and on perusal of materials, it is seen that in this case, the first incident took place in the month of July, 2021 and thereafter, during the month of December 2021. The complaint lodged with a delay of nearly seven months. The victim girl/PW1 and PW2 admitted that there was fight between the petitioner and his mother/PW2. Earlier, PW2 lodged a complaint against her husband/petitioner on several occasions for his drunkenness and behaviour. PW1 admits that she went along with her mother to the Police station to lodge a complaint against the petitioner for his attitude towards her mother. After PW2 came to know about the act of the petitioner,



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PW2 admits that she had been leading life as husband and wife. These facts were not considered by the trial Court.

6.Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and he is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.5,000/- (Rupees Five thousand only) with two sureties, each for a like sum to the satisfaction of the trial Court.

7.Further, 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 criminal 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 Miscellaneous Petition is ordered.



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12.03.2024

Index: Yes/No
Internet: Yes/No

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To

- 1.The Sessions Judge,
Mahalir Neethimandram (Fast Track Mahila Court),
Tiruppur.
- 2.All Women Police Station,
Tiruppur North,
Tiruppur City.
- 3.The Central Prison,
Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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