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*Crl.M.P.No.20241 of 2023
in Crl.A.No.1657 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2024

CORAM:

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

Crl.M.P.No.20241 of 2023

in

Crl.A.No.1657 of 2023

Vinoth

... Petitioner

Vs.

The State represented by
The Inspector of Police,
All Women Police Station,
Ulundurpet.
Crime No.09 of 2019

... Respondent

PRAYER: Criminal Miscellaneous Petitions filed under Sections 389(1) of Cr.P.C to suspend the sentence imposed by the order passed against the petitioner in S.C.No.331 of 2020 on 22.12.2023 by the Learned Sessions Judge, Magalir Neethimandram, (Fast Track Mahila Court), Villupuram, and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.S.Saravana Kumar

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



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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 S.C.No.331 of 2020 by a judgment dated 22.12.2023 on the file of the learned Sessions Judge, Magalir Neethimandram, (Fast Track Mahila Court), Villupuram and to enlarge the petitioner on bail pending disposal of the above Appeal.

2. The petitioner/A1 in SC.No.331 of 2020 facing trial along with his father. The Trial Court, by judgment dated 22.12.2023 while acquitting A2, convicted A1 for the offence under Sections 417 and 376 IPC and sentenced the petitioner to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/- and in default to undergo simple imprisonment for one month for the offence under Section 417 of IPC and to undergo Rigorous Imprisonment for 10 years and a fine of Rs.10,000/- in default to undergo simple imprisonment for 3 months for the offence under Section 376 of IPC. Aggrieved against the same, the present appeal has been filed by the petitioner/A1. The present miscellaneous petition seeking suspension of sentence and bail is filed by the accused.

3. During trial, on the side of the prosecution, PW1 to PW14 examined



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and marked Exs.P1 to P11. On the side of the defence, no witnesses examined and no document was marked. 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 the petitioner is that PW1/victim, who is a major and the petitioner were love with each other for more than four years. During their love relationship, they moved intimately to various places and on a promise, the petitioner had physical relationship with the defacto complainant, the victim had not opposed. Later, since the marriage could not be performed between them, a case of false promise and rape has been projected against the petitioner. The learned counsel further submits that from the evidence of PW1/victim, it is seen that the victim consciously and with consensus had relationship with the petitioner. He further submitted that the Trial Court had directed the petitioner to pay a sum of Rs.5,00,000/- to the victim/PW1 through the Legal Services Authority as compensation. The petitioner, to show his *bona fide* is ready to deposit a sum of Rs.3,00,000/- immediately and the balance amount of Rs.2,00,000/- will be paid within a period of two months thereafter to the credit of SC.No.331 of 2020. He has got no objection for the victim to withdraw the



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same. The learned counsel has produced the birth certificate of Vidhyasri, in which the petitioner has been recorded as father. He further submitted that whatever Vidhyasri is entitled through the petitioner, would be provided. The petitioner was aged about 29 years at the time of occurrence and without knowing the consequences, he had the relationship with the victim/PW1. 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 the defacto complainant hails from Valaiyampatu Village and 4 years back when she had gone to attend the Mariyamman temple festival of her village. A-1 had met her and had conveyed his love towards her. Subsequently on 13.11.2018 at about 6.00 p.m, A-1 had took her to Valaiyampattu Village railway bridge and while chatting together had made false promise of marriage and in a deceitful manner had sexual intercourse with her. In furtherance of it, A-1 had sexual intercourse with the defacto complainant on two more occasions in his “Savukku Thoppu”. Date of subsequent event was on 06.12.2018 and 09.12.2018. Thereafter the victim had become pregnant and when it was conveyed to A-1, he insisted upon her to abort the fetus stating that he was about to marry another women. As such, panchayat was



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convened on 28.03.2019. While the victim was 4 months pregnant, A-2 who is none other than the father of A-1 had offered Rs.50,000/- for aborting the fetus. Hence the complaint.

5.1. It is submitted that based on the above complaint, a case was registered in All Women Police Station, Ulundurpet, Kallakurichi in Crime No.09 of 2019, U/s.417, 376 IPC and Sec.4 of Women Harassment Act on 01.04.2019 at about 14.00 hours, by Tr.Thiruselvam, the then Sub Inspector of Police, All Women Police Station, Ulundurpet, Kallakurichi District and submitted before 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 investigation officer 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.

5.3. It is submitted that during the course of investigation, on 01.04.2019, the then Inspector of police arrested the accused and recorded their confession statement and produced them before the Learned Judicial Magistrate Court, Ulundurpet and remanded them into Judicial custody.

5.4. It is submitted after completion of elaborate and detailed



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investigation the then Inspector of Police filed a charge sheet before the learned Judicial Magistrate Court, Ulundurpet and the same was taken on file and assigned PRC No.16 of 2019, dated 18.01.2019 and the same was committed before the Learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), at Villupuram vide S.C.NO.331 of 2020.

5.5. It is submitted that the trial Court framed charges against the accused. During trial, the prosecution has examined 14 witnesses and marked 11 exhibits and no material object was marked. On defence side no witness, no exhibits and no material object were marked.

5.6. PROSECUTION WITNESSES:-

P.W.1	Survivor Victim/Defacto complainant	Deposed the incident happen to her and lodged a complaint before the respondent police [Ex.P.1] and her 164 Cr.P.C statement was marked as [Ex.P.2]
P.W.2	Tr.Sokkalingam/Father of Victim	Corroborated the evidence of P.W.1
P.W.3	Tmt.Thamaraiselvi/Mother of victim	Corroborated the evidence of P.W.1
P.W.4	Tr.Manikandan/Brother of P.W.1	Corroborated the evidence of P.W.1
P.W.5	Tr.Natarajan/Same Village People/Observation Mahazar Witness	Deposed that he attested in the observation mahazar [Ex.P.3]



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P.W.6	Dr.Tr.Mathuvarthana, Mudiyampakkam Government College & Hospital, Villupuram	Deposed that as per the requisition of Investigation Officer he treated accused and issued potency certificate [Ex.P5]
P.W.7	Tr.Vadivel/Neighbour/Same Village Witness	Hearsay Witness
P.W.8	Tr.Ganapathi/Same Village witness	Hearsay Witness
P.W.9	Tr.Suthan/Grade-1 P.C	Deposed that as per the instruction of investigation officer, he produced the accused for medical examination
P.W.10	Tmt.Megavalli/Grade-1 IPC	Deposed that as per the instruction of investigation officer, she produced the victim for medical examination
P.W.11	Dr.Tmt.Deepadharshini, Ulundurpet, Assistant Surgeon, Government Hospital	Deposed that as per the requisition of investigation officer, she examined victim and issued medical report [Ex.P6] Deposed that the hymen was not intact
P.W.12	Tr.Siva/Same Area People/Mahazar witness	Deposed that he attested in the observation mahazar [Ex.P7]
P.W.13	Tmt.Thiruselvam, AWPS Ulundurpet	Deposed that she received the complaint and registered a case, FIR in Cr.No.9 of 2019 [Ex.P8]
P.W.14	Tmt.Padma, Investigation Officer, AWPS Ulundurpet	Deposed that she took up the case for further investigation and went to the scene of occurrence and drew rough sketch and prepared observation mahazar and examined the witnesses and recorded their statements and complete the investigation and filed a charge sheet before the



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competent court in accordance
with law.

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

5.8. It is submitted that after conclusion of due trial, the trial court by its judgment in S.C.No.331 of 2020 dated 22.12.2023 on the file of learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Villupuram convicted the petitioner/appellant/accused and sentenced him as follows:-

U/s.417 IPC	Sentenced him to undergo 1 year Rigorous Imprisonment with fine Rs.1,000/- i/d 1 month S.I
U/s 376 IPC	Sentenced him to undergo 10 years Rigorous Imprisonment with fine Rs.10,000/- i/d 3 months S.I

5.9. It is submitted that based on the evidence of the prosecution witnesses supported by the prosecution exhibits, the trial Court rightly convicted the petitioner/appellant/accused-1. The trial Court convicted the petitioner/appellant/Accused-1 after scrutinizing the evidence of the prosecution witnesses and supporting documents. The prosecution has proved each and every circumstances point to the guilt of the accused and the



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prosecution have proved the case beyond all reasonable doubts. From the date of pronouncing judgment i.e., 22.12.2023 to till date, the Petitioner/Appellant/Accused-1 is confined into Central Prison, Cuddalore. Hence, prays for dismissal of the petition.

6. Both the victim and the petitioner were in love relationship, for some reason marriage life could not be continued. Now both have separate family and life.

7. Considering the submissions made and the fact that the petitioner is ready to deposit Rs.3,00,000/- immediately and Rs.2,00,000/- within one month after coming out on Bail to the credit of SC.No.331 of 2020, the petitioner is the only earning person, who has to take care of his children and family and considering the period of incarceration, this Court is inclined to suspend the sentence imposed on the petitioner.



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8. 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/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) each, with two sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate No.II, Ulundurpet.

(b) The petitioner to deposit Rs.3,00,000/- in SC.No.331 of 2020, produce the proof of deposit while executing sureties. The balance of Rs.2,00,000/- to be deposited within one month from the date of release from the petitioner.

(c) The victim to be informed and steps to be taken to hand over the deposited amount of Rs.3,00,000/- and Rs.2,00,000/- within ten days of deposit of the respective amounts.

(d) 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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(e) 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 revision 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 her absence as directed by the Trial Court.

9. Accordingly, this Criminal Miscellaneous Petition is ordered.

06.03.2024

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Note: Issue Order copy today (11.03.2024)

To

1. The Inspector of Police,
All Women Police Station,
Ulundurpet.
2. The Judicial Magistrate No.II,
Ulundurpet.
3. The Superintendent,
Central Prison, Cuddalore.
4. The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.



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