



Crl.MP(MD)No.3366 of 2024 in Crl.A(MD)No.240 of 2024

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G.ILANGOVAN, J

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This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in Special SC No.85 of 2020, dated 16/07/2024 passed by the Sessions Judge, Mahila Court, Trichy and enlarge him on bail pending disposal of the Criminal Appeal.

2.The case of the prosecution in brief:-

The victim girl is studying 10th Standard in Manachanallur Girls Government Higher Secondary School. On 14/08/2020 at about 11.00 am, when she was alone in her house, one Pasupathi, who is A1 knocked the door, she opened the door and making enquiry with him for the purpose of his visit. She was prevented from locking the door. At that time, A2 and A3 were hiding nearby. When the victim girl tried to lock the door, all the accused persons joined together, forcibly entered into the house. A1 stated that he is loving her, took her to bath room and committed penetrative sexual assault. At about 11.00 am, after A1 went away, A2 namely Varatharaj came to the bathroom, he was also committed sexual assault. At about 11.45 am after A2, A3 namely Thirupathi herein also committed the same offence upon the victim girl. She was criminally



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intimidated not to disclose the same to anyone. She intimated the same to the parents, when they returned to the house. On the basis of the complaint given by the de-facto complainant, a case in Crime No.18 of 2020 was registered for the offences under sections 450, 376DA IPC and section 5(g) and 6 of POCSO Act @ 450, 376DA and 376(3) IPC and section 5(g), 5(1) and 6(1) of POCSO Act.

3.After completion of the investigation, the respondent police filed a final report and the same has been taken cognizance in Special SC No.85 of 2020 by the Sessions Judge, Mahila Court, Trichy.

4.Before the trial court, on the side of the prosecution, 19 witnesses were examined and 14 documents were marked. On the side of the accused, no oral and documentary evidence was adduced.

5.At the conclusion of the trial process, the trial court found the petitioner guilty of the offence and sentenced him to undergo 5 years RI and to pay a fine of Rs.4,000/-, in default to undergo 3 months SI for the offence under section 450 IPC; and sentenced to undergo 20 years RI and to pay a fine of Rs.1,00,000/-, in default to undergo 6 months SI for the offence under section 5(g) r/w section 6(1) of POCSO Act; and sentenced to undergo one



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year RI and to pay a fine of Rs.1,000/-, in default to undergo 1 month SI for the offence under section 506(i) IPC and directed to run the sentences concurrently.

6.Challenging the conviction and sentence, this appeal is preferred by the appellant. Pending appeal, this criminal miscellaneous petition was taken out by the petitioner seeking suspension of sentence.

7.Heard both sides.

8.Now seeking bail by suspending the sentence, this petition has been filed by the petitioner stating that there is two days delay in lodging the FIR; there was motive between A1 and the relation of the victim girl; No medical evidence supported the case of the prosecution; With regard to the penetrative sexual assault, different story has been stated by the victim girl at different times.

9.Per contra, the learned Government Advocate (Criminal side) would submit that PW4 is the eye witness to the occurrence; She has stated that when all the accused came out of the house of the victim girl, she made enquiry, but the accused did not give proper reply; The motive has not been properly established by the accused.



10.Regarding the motive, I am not going to discuss the anything, since it is a matter for consideration at the time of hearing the main appeal. But *prima facie*, it indicates that the victim girl was subjected to repeated penetrative sexual assault by all the three accused one by one. Medical evidence shows that hymen was not intact. But no other injuries were found in the private part of the victim. So, this is not the fittest case to exercise the discretion to enlarge the petitioner on bail by suspending the sentence.

11.In the result, this criminal miscellaneous petition is **dismissed**.

04/09/2024

Index : Yes/No
Internet : Yes/No
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To,

- 1.The Sessions Judge,
Mahila Court,
Trichy.
- 2.The Inspector of Police,
All Women Police Station,
Srirangam, Trichy.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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