



CRL MP(MD) No.17978 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Ninth day of September Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice C.V.KARTHIKEYAN
and
The Hon`ble Mr.Justice J.SATHYA NARAYANA PRASAD

CRL MP(MD) No.17978 of 2023
in
CRL A(MD) No.644 of 2023

SUJI @ KASI

... Petitioner / Appellant / Accused No.1

Vs

THE INSPECTOR OF POLICE
CBCID, NAGERCOIL,
KANYAKUMARI DISTRICT.
(CRIME NO.8 OF 2020.)

... Respondent / Respondent / Complainant

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the Execution of Sentence by granting bail in SC.No.41 of 2021 dt.14.6.2023 on the file of the Learned Fast Track Mahila Court,Nagercoil,till the disposal of the Criminal Appeal.

Prayer in CRL A(MD) No.644 of 2023:

To admit the appeal on file, to call for the records from the lower Court in SC No.41 of 2021 on the file of the leaned Fast Track Mahila Court, Nagercoil and set aside the judgment dated 14.06.2023 by acquitting the accused and by allowing the appeal.

Order : This criminal miscellaneous petition coming up for orders on this day,



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upon perusing the petition filed in support thereof and upon hearing the arguments of M/s.V.KATHIRVELU, Senior Counsel for M/s.K. PRABHU, Advocate for the petitioner and of Mr.A.THIRUVADI KUMAR, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-

The first accused in S.C.No.41 of 2021 who had suffered an order of conviction by judgment, dated 14.06.2023 passed by the Fast Track Court, (Mahila Court) at Nagercoil, has filed the present Criminal Miscellaneous Petition seeking suspension of sentence.

2. There were two accused who faced trial, namely, the present petitioner who was arrayed as A1 and his father who was arrayed A2. As against this petitioner/A1, the Court had framed charges for offences punishable under Sections 90 r/w. 376(2) IPC, 417, 354(A) IPC, 354(B), 354(C), 354(D), 294(b), 506(ii) IPC and also under Section 66(E) of IP Act, 2000. As against A2, charges have been framed under Sections 201 r/w. 376, 201 r/w. 354(A), 201 r/w. 354(B), 201 r/w 354 (C), 201 r/w. 354(C) 201 r/w. 354(D) IPC and also under Section 201 r/w. Section 66(E) of Information Technology Act.

3. After trial, the petitioner/A1 had been convicted, however, the Court found that the charges against A2 were not proved beyond reasonable doubt and had acquitted A2. So far as this petitioner/A1 is concerned, he had been convicted for offence under Section 90 r/w. 376(2)(N) of IPC and sentenced to life



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imprisonment until natural death and fine of Rs.1,00,000/- (Rupees One Lakh only)

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in default one year rigorous imprisonment and for the offence punishable under Section 354(C) IPC, sentenced to 3 years rigorous imprisonment and fine of Rs.10,000/- (Rupees Ten Thousand only) in default 6 months rigorous imprisonment and for offence under Section 506(ii) IPC sentenced for 3 years rigorous imprisonment. The trial Court had further directed that out of the fine amount, a sum of Rs.1,00,000/- (Rupees One Lakh only) will have to be paid to the victim under Section 357(3) Cr.P.C.

4. In order to ensure that the identity of the victim is not revealed, we would refer to the victim only as the victim. The trial Court had mentioned her as XXX.

5. The victim had lodged a complaint to the Superintendent of Police, CBCID South Zone at Chennai, dated 30.09.2019. It was in her own handwriting. After that, the following noting is available namely, “received the petition on 30.09.2019 at 11.45 hours and sent to the Superintendent of Police, Crime Branch, CID South Zone, Headquarters Chennai for direction”. The date mentioned by the victim is 30.09.2019 and the date in the aforementioned note is dated 30.09.2020. This had been pointed out by the learned Senior Counsel on behalf of the petitioner who argued that there is an apparent difference in the year and pointed out that the



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victim is a educated lady and therefore, this particular mistake should be taken serious note of by this Court.

6. During evidence, the victim had been examined as P.W.1. In her chief examination before the Court, she had stated that she had first received a request through a particular face book ID seeking her friendship and she had rejected the said request on 3 or 4 occasions, but still the request kept coming persistently and finally, she had put up an acceptance for the said request. The said facebook ID had been pointed out by the learned Senior Counsel and stated that the said ID could never had been generated and be permitted in the face book as the mark '.' would not be accepted. In this connection, he also placed on record the general guidelines issued for creation of an ID in facebook.

7. This is a question which has to be addressed to the victim. At this stage, we are not inclined to take on record that particular statement. At any rate, in her evidence, the victim had first stated that the first contact with the accused was on 09.09.2019 and thereafter, on that date, she had a conversation with the accused/A1. Again, on 19.09.2019, they had a further conversation. That date came about because A1 had stated that he would like to speak her about their future, naturally, giving the impression that a long term relationship had been proposed by A1.



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8. In her evidence, the manner in which she had been physically exploited and the unnatural act which she had been forced to do on 19.09.2019, had been narrated by her. Thereafter, she stated about yet physically exploitation on 20.09.2020. It had been stated that on that particular date, the entire sequence had been recorded by A1 in an Apple Pro-11 i-phone. Once there has been recording of an intimate relationship, then it is evident the victim had finally fallen into the trap laid by A1. Thereafter, during the course of trial this particular recording had been produced by the prosecution as a material object, but not in the Apple pro-11 iphone, but in an Apple laptop which was produced as M.O.3. Prosecution has also produced an Apple pro-11 iphone as M.O.4 and a Black colour Apple iphone as M.O.5.

9. The learned Senior Counsel pointed out the scientific evidence in this regard and stated that the videos which were found in M.O.3-laptop could not have been transferred from anyone of the aforementioned of Apple iphones and that a separate iphone must have been used. The learned trial Judge had however, come to a conclusion that the accused has hidden away the actual phone in which he had recorded the intimate scenes with the victim and that therefore, the prosecution was not able to produce the original recording.

10. Further arguments in this regard had been advanced by the learned



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Senior Counsel about primary evidence and the secondary evidence and non-production of a certificate under Section 65(B)(4) of the Indian Evidence Act. It was argued that non-production of the original device would go to the root of the issue. But the prosecution had examined a scientific expert who tendered evidence about the recordings made available in the aforementioned material objects. They had also produced Ex.P.18 which is a cloned copy of the recording.

11. The learned Senior Counsel pointed out the evidence of P.W.18, the Scientific Expert, wherein, he had stated that a cloned copy is not the actual original and also pointed out that morphing is possible. The very word 'clone' indicates that it is not the original but a copy taken from the original. Morphing of images is always possible and very minimal technology is required to morph either a face or a body and superimpose the same over another face or another body. But the issue is whether the video recorded by A1 of himself and the victim were actually morphed or cloned. The original was in the phone in which it had been taken. Thereafter, the recording had been transferred in an Apple laptop. The original phone in which the actual video was taken could not be recovered by the respondent. They could recover the laptop and that was recovered from A2.

12. As a matter of fact, even the other material objects had been recovered only from A2, who is none other than the father of A1. The respondent



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could recover only what could be possibly seized during the course of investigation.

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They could be seized during the investigation only on information provided by the accused. On such information provided, discovery was made of a new fact which was earlier not known to the investigation officer. On such discovery, if a material object is recovered and if there are some material in such object relating to the offence for which the accused is charged and is being investigated, then the object becomes material so far as the trial process is concerned. In the instant case, M.O.3 is a laptop and when analysed, it contained videographs of the victim and A1 in quite intimate scenes. Very fairly P.W.18 had stated that it is not the original recording but a transfer from the phone in which the actual recording was done. The fact which is establishing that there had been intimate relationship between the victim and A1 and that the same had also been videographed and a copy had been preserved in a laptop which is M.O.3. The further aspect as to where the phone is, in which it was actually recorded is a matter which, to the sole knowledge of A1 alone and it is he who has to give an explanation as to the availability of the phone in which the same has been recorded.

13. It is contended by the learned Senior Counsel that the victim is an educated lady and that it was a consensual relationship. But the evidence reveals that the victim had pleaded that she comes from a very poor family and that A1 is



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coming from quite an affluent family. She stated at least on two occasions in her chief examination that she had protested the relationship and that she comes from a poor family. But still A1 was able to exert influence over her and force her to commit unnatural sexual acts during their intimate relationship. This is an undue influence taking advantage of the economic condition of the victim.

14. It is also pleaded on behalf of the petitioner by the learned Senior Counsel, that the complaint which had been lodged was not genuine. We find no reason to doubt the genuineness of the complaint given by the victim. She had stated about the dates in which she had fallen in the trap of the accused and though she had signed, giving the date as 13.09.2019, it had been given in person only on 30.09.2020 and we hold that whether that particular date given by her as 2019 is correct or 2020 is correct is a matter to be examined and revisited during the course of argument in the Criminal Appeal on the basis of analysis of evidence adduced. But the documents further revealed that thereafter, the Superintendent of Police, CBCID South Zone at Chennai had directed investigation to be conducted by Inspector of Police, Shanthi, who had received it and a perusal of the FIR narrates the entire sequence of directions being received and FIR being registered and investigation being conducted. These are aspects which can be re-examined during the course of Criminal Appeal but would not be sufficient material in our opinion to



grant suspension of sentence to the accused.

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15. It is also seen that the accused is also involved in 8 other similar cases and that trial is ongoing in all those cases. So far as this case is concerned, the accused had not been let out on bail.

16. Taking into consideration the fact that if the sentence is suspended, there is every possibility of the petitioner influencing the witnesses in the other cases wherein the trial is ongoing and in which, the laptop which had been produced before the trial in this case, namely, M.O.3 is also a material piece of evidence in those cases, we hold that, at this juncture, it may not be prudent to grant suspension of sentence.

17. The learned Senior Counsel also further pointed out that there are so many contradictions in the evidence of P.W.1. A Criminal Appeal is a continuation of examination of evidence already adduced and during the course of Criminal Appeal, most certainly, opportunity would be granted to advance all arguments which touch upon the correctness of the judgment of the trial Court.

18. At this stage, the interest of the victim will have to be protected and more importantly, the possibility of the petitioner herein influencing that the trials in other cases which are also similar in nature. The pendulum swings in favour of the witnesses being protected. The trial Judges in those Courts should be granted



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opportunity to examine the witnesses uninfluenced by any extraneous materials which is possible if the present petitioner is granted suspension of sentence.

19. In view of these reasons, we are not inclined to grant suspension of sentence.

20. Accordingly, the Criminal Miscellaneous Petition stands dismissed.

21. The observation made herein are restricted only to examining whether the petitioner should be granted suspension of execution of sentence and certainly, will never be considered by a Co-ordinate Division Bench whenever they examine the merits in the Criminal Appeal or by the trial Court in the ongoing criminal cases.

sd/-
09/09/2024

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/09/2024
Sub-Assistant Registrar
(C.S.I /II /III /IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

RM

To

1.The Sessions Judge,
Fast Track Mahila Court, Nagercoil.



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2.The Inspector of Police,
CBCID, Nagercoi,
Kanniyakumari District.

3.The Superintendent,
Central Prison, palayamkottai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER
IN
CRL MP(MD) No.17978 of 2023
in
CRL A(MD) No.644 of 2023
Date :09/09/2024

ED/ SG /SAR- (23/09/2024) 11P / 5C

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