



Crl.M.P.No.14020 of 2024 in Crl.A.No.370 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2025

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.14020 of 2024
in Crl.A.No.370 of 2024

Prabhu

... Petitioner

Vs.

State Represented by
The Inspector of Police,
Veganur Police Station,
(Crime No.16 of 2020)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) of Cr.P.C. and Section 430(1) of BNSS, to suspend the conviction and sentence imposed on the petitioner by judgment and order dated 26.12.2023 in S.C.No.20 of 2021 on the file of the Sessions Judge, Fast Track Mahila Court, Ariyalur and to enlarge the petitioner on bail pending disposal of the above said Criminal Appeal.

For Petitioner : Ms.S.Vasavi Sridevi

For Respondent : Dr.C.E.Pratap,
Government Advocate (Crl. Side)



Crl.M.P.No.14020 of 2024 in Crl.A.No.370 of 2024

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence of imprisonment imposed in S.C.No.20 of 2021, dated 26.12.2023 by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur and to enlarge the petitioner on bail pending disposal of the appeal.

2.The case of the prosecution is that the victim is a mentally retarded person; that the victim girl used to stay in her relative's house when her mother went for coolie work; that on 06.02.2020 at about 02.00 p.m., when the victim girl went to the Post Office and returned to her relative's house, the petitioner, who was standing near the house, voluntarily took the victim girl to his house and had sexual intercourse and also gave life threat by showing knife; and that the victim had informed about the occurrence to her mother and FIR was lodged on the next day of the occurrence.

3.The petitioner was convicted for the offence under Section 376(2)(1) IPC and sentenced to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default of payment of fine to undergo Simple Imprisonment for six months *vide* judgment, dated 26.12.2023 made in



S.C.No.20 of 2021.

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4.The learned counsel for the petitioner would submit that the evidence of the victim girl is not corroborated by the Doctor; that the Doctor had not found any evidence of forcible sexual intercourse; that the conviction cannot be sustained based on the sole testimony of the victim; and that though the earlier petitions for suspension of sentence were dismissed, considering the period of incarceration and the points raised by the petitioner, the sentence imposed against the petitioner may be suspended.

5.The learned Government Advocate (Crl. Side) on instructions would submit that the prosecution has established the case beyond all reasonable doubt; that there is no reason to interfere with the judgment of the Trial Court; and that in any case, no ground for suspension of sentence has been made out.



6.Though the earlier bail applications were dismissed by this Court on 23.04.2024 and 25.07.2024, it is seen that the petitioner has been in custody from 26.12.2023. The Doctor who had examined the victim found on examination of the victim that there is no trace of semen, no external injuries and no evidence of forcible sexual intercourse. It is the case of the prosecution that the victim is a mentally retarded person and hence, this Court has to determine whether the conviction can be based on the sole testimony of the victim.

7.Considering the above; the fact that there are several arguable points in the appeal which requires consideration; that the petitioner is in custody from 26.12.2023; and that the appeal is not likely to be taken in the near future; this Court is inclined to grant the relief of suspension of sentence.

8.Accordingly, this criminal miscellaneous petition stands allowed and the sentence imposed on the petitioner is suspended and the petitioner is ordered to be released on bail on the following conditions:



Crl.M.P.No.14020 of 2024 in Crl.A.No.370 of 2024

(i)The petitioner 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, Fast Track Mahila Court, Ariyalur;

(ii)The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity; and

(iii)The petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m until further orders and if he is not able to appear before the trial Court on any 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.

09.01.2025

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Crl.M.P.No.14020 of 2024 in Crl.A.No.370 of 2024

SUNDER MOHAN, J.

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To

- 1.The Sessions Judge,
Fast Track Mahila Court,
Ariyalur.
- 2.The Inspector of Police,
Veganur Police Station
- 3.The Central Prison,
Trichy.
- 4.The Public Prosecutor,
Madras High Court.

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