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CRL MP No. 15319 of 2024 in
CRL A NO.1550 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23-01-2025**

CORAM

THE HONOURABLE MR JUSTICE SUNDER MOHAN

CRL.M.P.NO.15319 of 2024

in CRL A.No.1550 of 2023

GANESHAN

S/o Kuppusamy, No. 5/35-C, Karattukadai,
Sembadapalayam Post, Kuruchi Village, Bhavani
Taluk, Erode District.

Appellant(s)

Vs

State Rep By

The Inspector Of Police, Ammapettai Police
Station, Bhavani Taluk, Erode District. Crime
No.265 Of 2021

Respondent(s)

For Appellant(s): Mr.K.M. Subheramaniam

For Respondent(s): Dr.C.E.Pratap

Govt Advocate (crl Side)

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the conviction and sentence imposed on the petitioner vide judgment dated 11.10.2023 in Spl.S.C.No.86 of 2021 on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Magila Court), Erode and enlarge the petitioner on bail, pending the above Criminal Appeal.



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2. It is the case of the prosecution that the petitioner and the victim were known to each other; that the petitioner is the brother of the victim's friend; that on 22.08.2021, the petitioner had asked the victim to come out of her house so that they can marry and live together. Therefore, the victim came out of her house and the petitioner took her to various places and on 26.08.2021, he took her to a temple and tied thaali and subsequently they stayed separately in a house where the petitioner is said to have committed penetrative sexual assault. On the complaint given by the victim's father, a case was registered in Crime No.265 of 2021 for “girl missing” and after the girl was secured, the case was altered to Section 366 of IPC and Section 9 r/w 5 of POCSO Act.

3. The petitioner/accused in Spl.S.C.No.86 of 2021 was convicted by the trial court and sentenced to undergo **Twenty years** Rigorous Imprisonment with fine of Rs.5000/- for the offences u/s 5(l) r/w 6 of POCSO Act and in default to undergo additional simple imprisonment for three months. Aggrieved by the same, the petitioner/accused filed Crl.A.No.1550 of 2023 along with the instant miscellaneous petition seeking suspension of sentence and bail.



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4. The learned counsel for the petitioner would submit that the age of the victim has not been conclusively established by the prosecution; that the Head Master of the school where the victim studied, examined as PW10 had stated the date of birth of victim as 19.07.2004; that the Registrar of Births examined as PW11 had issued a birth certificate at the instance of the police in which the date of birth is stated as 10.08.2004; that the victim herself had stated her date of birth as 19.08.2004; that hence, the prosecution had failed to establish the date of birth; that the victim had made contradictory statements at various stages and therefore the conviction cannot be sustained on the sole testimony of the victim and that there are several arguable points in the above appeal which requires consideration. The learned counsel further submitted that the petitioner was in custody during investigation for 90 days and is now in custody from 11.10.2023.

5. Heard the learned Govt. Advocate (crl.side) and perused the counter affidavit filed by the respondent.

6. The perusal of the evidence of PW10, PW11 & PW1 who are the Head Master, Registrar of Births and the victim would show that the date of birth had been stated differently by all the witnesses, as submitted by the



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learned counsel for the petitioner. Be that as it may. The victim had stated to the doctor that she had consensual of sexual intercourse with the accused and she got married to the accused. However, in her deposition, she would state that that she was forced to have sexual intercourse. Further, the doctor who examined the victim had opined that there were no external injuries in the genital area of the victim or other parts of her body. Therefore, it has to be examined whether the conviction can be sustained on the sole testimony of the victim.

7. Considering the above and the fact that the petitioner is in custody from 11.10.2023 and that the appeal is not likely to be taken up in the near future, this Court is inclined to grant the relief of suspension of sentence to the petitioner.

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:



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- (i) The petitioner shall execute a bond for a sum of Rs.10,000/-, with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Magila Court), Erode
- (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 the disposal of the appeal 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.

23.01.2025

rgf

Issue order copy by 24.01.2025
Upload the order copy forthwith.



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SUNDER MOHAN, J.

rgt

To

- 1.The Sessions Judge,
Magalir Neethi Mandram (Fast Track Magila Court),
Erode
- 2.The Inspector Of Police,
Ammappettai Police Station,
Bhavani Taluk, Erode District.
- 3.The Superintendent
Central Prison,
Coimbatore,
- 4.The Public Prosecutor,
High Court, Madras.

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