



Crl.M.P.No.19166 of 2023
in Crl.A.No.1466 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2025

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THE HONOURABLE Mr.JUSTICE SUNDER MOHAN

Crl.M.P.No.19166 of 2023

IN

Crl.A.No.1466 of 2023

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.. Petitioner

Vs

State by the Inspector of Police
Kanagamma Chatram Police Station
Transferred for investigation to
All Women Police Station
Tiruttani
Tiruvallur District
(Crime No.381 of 2019)

.. Respondent

Criminal Miscellaneous Petition filed under Section 398(i) Cr.P.C., to suspend the sentence of imprisonment imposed on the petitioner by the Hon'ble Mahalir Neethimandram (Fast Track Mahila Court), Tiruvallur in Spl.S.C.No.69 of 2020 dated 09.06.2023 pending disposal of the above criminal appeal.

For Petitioner : Mr.V.Murugesan

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



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ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence of imprisonment imposed on the petitioner by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Tiruvallur, by judgment dated 09.06.2023, in Spl.S.C.No.69 of 2020, pending disposal of the above criminal appeal.

2. The petitioner, who is arrayed as accused No.1 in the above Sessions Case, was convicted and sentenced as follows:

<i>Offence under Section</i>	<i>Sentence imposed</i>
366 IPC	To undergo RI for ten years and to pay a fine of Rs.5,000/-, in default to undergo SI for six months.
342 IPC	To undergo SI for one year and to pay a fine of Rs.1,000/- in default to undergo SI for one month
5(l) POCSO Act	To undergo RI for twenty years and to pay a fine of Rs.5,000/- in default to undergo SI for six months
Sentences were ordered to run concurrently.	

Aggrieved by the same, the petitioner filed Crl.A.No.1466 of 2023 before this Court along with the instant miscellaneous petition seeking suspension of sentence and bail.



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3. The case of the prosecution is that the victim and the petitioner resided in the same village; that the petitioner was known to the victim; that while the victim was studying VIII standard in a Government school; on 09.11.2019, the victim was found missing and a case therefore, was registered in Crime No.381/2019 for 'girl missing'; that investigation revealed that the petitioner had taken the victim in his bike to a lodge and gave her a chocolate which made her unconscious; and that thereafter, he committed penetrative sexual assault by tying both her legs in the cot.

4. The learned counsel for petitioner would submit that the victim has given an exaggerated version, contrary to her statement recorded under Section 164 Cr.P.C., wherein, she had not stated about the alleged threat or about the petitioner giving a chocolate which caused drowsiness and the penetrative sexual assault said to have been thereafter committed; that the evidence of the Doctor would also suggest that the victim's version with regard to forcible sexual intercourse, cannot be believed; that the petitioner is in custody from the date of judgment viz., 09.06.2023 and prayed for grant of suspension of sentence to the petitioner.



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5. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent and perused the counter affidavit.

6. The learned Government Advocate (Crl. Side) would submit that even assuming that the victim had given consent, her consent is immaterial, as the victim was aged about 13 years and therefore, there is no infirmity in the judgment of the trial Court and prayed for dismissal of the petition.

7. It is seen from the perusal of the evidence of the victim that she had not narrated what she had deposed in Court in her earlier version, in the statement recorded under Section 164 Cr.P.C. Further, the evidence of the Doctor, who examined the victim also suggest that the victim was not subjected to forcible sexual intercourse. The question, as to whether the conviction can be sustained on the basis of the sole testimony of the victim, has to be considered by this Court in the instant appeal. The appeal is not likely to be taken up in the near future. Further, the petitioner is in custody from 09.06.2023. Hence, this Court is inclined to grant the relief of suspension of sentence to the petitioner.



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8. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence imposed on the petitioner is suspended till the disposal of the above Criminal appeal and the petitioner is ordered to be released on bail on the following conditions:

- (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, Mahalir Neethimandram (Fast Track Mahila Court), Tiruvallur;
- (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 Aadhaar 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 the petitioner 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.

03.01.2025

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Issue order copy by 07.01.2025



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SUNDER MOHAN, J.

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To

1.The Mahila Court

Mahalir Neethimandram (Fast Track Mahila Court)

Tiruvallur

2.The Inspector of Police

Kanagamma Chatram Police Station

Transferred for investigation to

All Women Police Station

Tiruttani, Tiruvallur District

3.The Public Prosecutor

High Court, Madras

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