



Crl.M.P.No.16729 of 2024 in Crl.A.No.1486 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.16729 of 2024
in Crl.A.No.1486 of 2024

Subramani

... Petitioner/Accused

Vs.

State of Rep. by its
The Inspector of Police,
Dharapuram All Women Police Station,
Dharapuram.

(Cr.No.06/2019)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (2) of Cr.P.C., to suspend the sentence imposed on the petitioner in Spl.S.C.No.38 of 2019, passed by the learned Sessions Judge, Magaliar Neethimandram, (Fast Track Mahila Court), Tiruppur, by an order dated 17.10.2023 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

For Petitioner : Mr.S.Ilamuhil

For Respondent : Dr.C.E.Pratap

Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed seeking to



suspend the sentence imposed on the petitioner/accused by judgment and order dated 17.10.2023 passed in Spl.S.C.No.38 of 2019 on the file of the learned Sessions Judge, Magaliar Neethimandram (Fast Track Mahila Court), Tiruppur, and to enlarge the petitioner on bail pending disposal of the appeal.

2. The case of the prosecution is that the petitioner and the victim were known to each other; that the petitioner was working as a Mason and he used to call the victim's mother for coolie work; that on 01.09.2019 at about 10.00 hours, since the victim's mother was not feeling well, the petitioner took the victim promising to give her coolie work and that the victim thereafter did not return to the house; that since the victim did not return till 06.09.2019, a complaint was lodged and a case was registered for the offence under Sections 366 IPC and 5(1) r/w 6 of the POCSO Act.

(ii) It is the further case of the prosecution that between 01.09.2019 and 05.09.2019, the petitioner took the victim to various places and committed penetrative sexual assault, under the promise of marriage.



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3. The petitioner was convicted and sentenced by the trial Court as follows:

Offence under Section	Sentence imposed
Sections 366 IPC	To undergo RI for seven years and to pay a fine of Rs.1,000/-, in default to undergo RI for six months
5(l) r/w 6 POCSO Act.	To undergo RI for twenty years and to pay a fine of Rs.2,000/-, in default to undergo RI for six months
The sentences are directed to run concurrently.	

4. Heard Mr.S.Ilamuhil, learned counsel for the petitioner and Dr.C.E.Pratap, learned Government Advocate (Crl.Side) appearing for the respondent/State.

5. (i) The learned counsel appearing for the petitioner would submit that the victim had made contradictory statements in her Section 164 Cr.P.C. statement and in her deposition, as to the date of the alleged occurrence and the manner in which police apprehended the petitioner and secured her; that the conduct of the defacto complainant in lodging the complaint six days after the victim went missing would show that the victim was taken by the petitioner with the defacto complainant's consent; that in any event considering the nature of the evidence, it is



highly unsafe to convict the petitioner on the sole testimony of the victim; and that the petitioner was in custody during trial for the period from 06.09.2019 to 30.10.2020 and from 27.12.2022 till date and therefore, prayed for suspension of sentence.

6. Heard the learned Government Advocate (Crl.Side) and perused the counter affidavit.

7. The learned Government Advocate (Crl.Side) *per contra* would submit that though there is a delay in lodging the complaint, the delay itself would be immaterial, as the victim had stated about the occurrence cogently and the minor contradictions pointed out by the petitioner would not discredit her testimony and prayed for dismissal of the petition.

8. On perusal of the evidence of the victim, this Court finds that there are material contradictions in Section 164 Cr.P.C. statement and in the deposition of the victim, which had been elicited in her cross-examination. The doctor, who treated the victim has stated that there were no external injuries and ruled out forcible sexual intercourse. There



is a delay of six days in lodging a complaint. Hence, there are several arguable points in the appeal, which require consideration.

9. Therefore, considering the above and the fact that the petitioner is in custody for more than three years and also the fact 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.

10. Accordingly, this criminal miscellaneous petition stands **allowed**. The sentence imposed on the petitioner is suspended 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, Magaliar Neethimandram (FTMC), Tiruppur;
- (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.

09.01.2025

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Issue order copy by 10.01.2025.

Upload the order copy today.

To

1. The Sessions Judge,
Magaliar Neethimandram (FTMC),
Tiruppur;
2. The Inspector of Police,
Dharapuram All Women Police Station,
Dharapuram.
3. The Superintendent of Prisons,
Central Prison, Coimbatore.
4. The Public Prosecutor,
Madras High Court.



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SUNDER MOHAN, J.

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