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*Crl.M.P.No.218 of 2025
in Crl.A.No.32 of 2025*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2025

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.218 of 2025

in

Crl.A.No.32 of 2025

Sibichakaravarthi

... Petitioner /Accused

Vs.

State represented by
The Inspector of Police,
Harur Police Station,
Dharmapuri District.
(Crime No.136 of 2017)

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 430 of BNSS praying to suspend the sentence passed in Spl.S.C.No.02/2018 on the file of the Fast Track Mahila Court, Dharmapuri, vide judgment dated 23.05.2024 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

For Petitioner : Mr.A.Abdul Lathif

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 imposed on the petitioner by the judgment dated 23.05.2024 passed in Spl.S.C.No.02 of 2018 by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri, pending disposal of the above criminal appeal and enlarge the petitioner on bail.

2. It is the case of the prosecution that the victim, aged about 17 years and the petitioner were known to each other; that the victim went along with the petitioner; that the petitioner on the promise of marriage took her to his relative's house and stayed along with the victim for 15 days and during that period he had sexual intercourse with the victim and on the complaint of PW1, the case was initially registered for 'girl missing' and subsequently altered to the offence under Section 5(l) r/w. 6 of POCSO Act.

3. The petitioner/Accused in Spl.S.C.No.02 of 2018 was convicted by the Trial Court by the judgment dated 23.05.2024 for the offences under Section 366 of I.P.C. and Section 5(l) r/w 6 of POCSO Act and sentenced to



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undergo 5 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for six months for the offence under Section 366 of I.P.C. and for the offence under Section 5(l) r/w 6 of POCSO Act, sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for six months. Aggrieved by the same, he filed Crl.A.No.32 of 2025 before this Court along with the instant miscellaneous petition seeking suspension of sentence and bail.

4.The learned counsel for the petitioner would submit that admittedly it is a case of love affair; that the prosecution had not established the age of the victim in the manner known to law; that in any case PW4/victim had categorically stated in the cross examination that the complaint against the petitioner is false; that only at the instance of police, she had deposed in the chief examination that the petitioner had sexual intercourse with her; that the deposition in the chief examination is false; that hence the conviction cannot be sustained on the basis of such evidence and prayed for granting suspension of sentence.



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5. Heard the learned Government Advocate (Crl. Side) and perused the counter affidavit. The learned Government Advocate per contra submitted that the victim was cross examined 4 years after the chief examination and she turned hostile and that merely because she turned hostile after 4 years her version cannot be disbelieved and the conviction cannot be faulted.

6. Admittedly, it is a case of love affair. The petitioner was aged 25 years at the time of occurrence and the victim was aged 17 years at the time of occurrence. The victim had categorically stated in the cross examination that her deposition in chief was false and was made at the instance of police. Though the cross examination was conducted 4 years after the chief examination, it has to be examined in the above appeal whether the conviction can be sustained on the basis of such evidence. The petitioner is in custody from 23.05.2024. Considering the above facts and the period of incarceration, this Court is inclined to grant suspension of sentence to the petitioner.

7. 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:



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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, Fast Track Mahila Court, Dharmapuri;
- (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.

31.01.2025

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Issue order copy by 04.02.2025
Upload the order copy forthwith.



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SUNDER MOHAN, J.

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To

- 1.The Sessions Judge,
Fast Track Mahila Court, Dharmapuri.
- 2.The Inspector of Police,
Harur Police Station,
Dharmapuri District.
- 3.The Superintendent,
Central Prison,
Salem.
- 4.The Public Prosecutor,
High Court, Madras.

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