



CRL MP(MD) No.14930 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Reserved on : 30.10.2023

Pronounced on : 22.11.2023

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.14930 of 2023

in

CRL A(MD) No.386 of 2023

MAHARAJA

... Petitioner / Appellant / Sole Accused

Vs

STATE REPRESENTED BY

THE DEPUTY SUPERINTEND OF POLICE,

PULIYANGUDI SUB DIVSION,

PULIYANGUDI POLICE STATION,

(CRIME NO.129/2015.)

... Respondent / Respondent / Complainant

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the execution of sentence by granting bail in SC No.52/2016 dt.17.04.2023 on the file of the Learned IInd Additional Sessions Judge (PCR), Tirunelveli district pending disposal of the above Criminal Appeal.

Prayer in CRL A(MD). 386/ 2023 :

To admit this appeal on file, to call for the records from the Lower Court in S.C.No.52 of 2016 on the file of the Learned II Additional District and Sessions Court (PCR), Tirunelveli dated 17.04.2023 and duly set aside the judgement, by acquitting the appellant.



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Order : This criminal miscellaneous petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.V.KATHIRVELU, Senior Counsel for M/S.PRABHU.K, Advocate for the petitioner and of Mr.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

The petitioner has filed this Criminal Miscellaneous Petition to suspend the sentence imposed against him in S.C.No.52 of 2016 on the file of the learned II Additional Sessions Court (PCR), Tirunelveli dated 17.04.2023 and to release him on bail till the disposal of Criminal Appeal.

2.The brief facts of the prosecution case:-

The petitioner and the victim/P.W.1 worked in a private company namely Indian Chevu Company and they developed love affair with each other. Eight months prior to 20.03.2015, the petitioner had forcibly sexual relationship with the victim girl under false promise to marry her. Thereafter the petitioner refused to marry. The victim girl belonged to Scheduled Caste. The mother of the victim girl lodged police complaint before the respondent Puliyangudi Police Station. The respondent police registered FIR in Cr.No.129/2015 u/s 376, 506(i) of IPC and u/s 3(2)(v) of the Scheduled Caste and Schedule Tribes (Prevention of Atrocities) Act,1989 against the petitioner. P.W.23 Deputy Superintendent of Police did investigation and laid charge sheet. The petitioner was charged for the offence under Section 376 of



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IPC and under Section 3(2)(v) of SC/ST Act.

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(I) To prove the charge the prosecution examined 23 witnesses as P.W.1 to P.W.23 and marked 24 exhibits. The petitioner/accused has not examined any witness and not marked any document. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner/accused guilty under Section 376 of IPC and convicted and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for a period of 3 months and the petitioner found not guilty under Section 3(2)(v) of SC/ST Act and acquitted him by passing impugned judgment dated 17.04.2023.

3. Aggrieved by the conviction judgment, the accused has preferred the present Criminal Appeal before this Court. Along with appeal, the petitioner has filed this petition seeking for suspension of sentence and for bail till disposal of the appeal.

4. Heard both sides and perused the records in this Criminal Miscellaneous Petition.

5. The learned counsel for the petitioner has submitted that this is the second petition and already the petitioner filed Crl.M.P.(MD)No.7398 of 2023 and the same was dismissed on 09.06.2023 considering short period of incarceration. The victim girl is a major and she is 24 years old. The petitioner and the victim girl developed



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love affair with each other. Both have consensual sexual relationship. The victim girl never refused or objected the sexual relationship. The victim girl knew about the family of the petitioner. The evidence of P.W.1 clearly substantiate the same. The complaint was given after lapse of 8 months and the prosecution did not explain the reason for the delay. The victim/PW1 had contacts with other persons, which was admitted in her evidence. She admitted in her evidence that she did not lodge complaint when she knew that she was pregnant. She also admitted in her evidence that she would not give complaint if the fetus aborted. This is a case of consensual affair between two grown up and adults, which was later projected as a rape case under guise of false promise of marriage. The victim as P.W.1 deposed that she is aged 24 years and she did not object the sexual relationship between the petitioner and her. Therefore, the charge under Section 376 of IPC would not attract against the petitioner. The petitioner never committed any crime under false promise. The DNA test report is not a criteria for convicting the accused and the DNA test report is only to prove the biological father of the child. The Trial Court has misconstrued the settled propositions of law and convicted the petitioner. The petitioner has fair chance of succeed in the appeal. The petitioner is in prison for more than seven months from 17.04.2023. The petitioner has family and to maintain his family. Therefore, the learned counsel for the petitioner prays for suspension of sentence



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and bail for the petitioner. In support of his argument the learned counsel for petitioner relied on the judgment of this Court in Crl.Appeal No.542 of 2019, dated 10.12.2021.

6. Per contra, the learned Additional Public Prosecutor appearing for the respondent has contended that the Trial Judge has elaborately discussed the contentions of the petitioner along with the oral and documentary evidence adduced by the prosecution and come to conclusion that the petitioner compelled and forced the victim/PW1 to have physical sexual relationship by making her believe that he would marry her and thereby she became pregnant and gave child birth and that DNA test report proved the petitioner as the biological father of that child and therefore, found guilty of charge under Section 376 of IPC. Conviction of accused can be based on sole testimony of prosecutrix without corroboration and the Appellate Court should not reappreciate the evidence at the stage of 389 of Cr.PC. Further, he would submit that the prosecutrix of a sex offence cannot be put on part with an accomplice and she is in fact a victim of the crime and the accused cannot be released on bail solely on the ground of staggering pendency of the appeal and the period of detention undergone by him. The earlier petition was dismissed by this Court on 09.06.2023. The period of incarceration is immaterial. The gravity of offence committed by the petitioner has to be looked in this case. Therefore, he



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strongly opposed to grant suspension of sentence and thereby the petitioner is not entitled to bail. In support of his argument, the learned Additional Public Prosecutor relied on the following citation:

1) Judgment dated 01.12.2021 in Criminal Appeal No.1520 of 2021 rendered by the Hon'ble Supreme Court (Phool Singh Vs. The State of Madhya Pradesh)

2) 2023 Live Law (SC) 389 (Omprakash Sahni Vs. Jai Shankar Chaudhary & Anr)

3) Judgment dated 15.07.2008 in Criminal Appeal No.....of 2008 (Arising out of SLP (Crl) No.47561 of 2006) rendered by the Hon'ble Supreme Court (Moti Lal Vs. State of M.P)

4) 2019 SCC Online Bom 155 (Ashok Pundalik Gavade Vs. State of Maharashtra)

7. On hearing both side rival arguments and on perusal of records, it is clear that the petitioner and the prosecutrix/PW1 developed love affairs and both are major persons. The petitioner is already a married man. On perusal of evidence of P.W.1, who would admit in her cross examination that she never tried to escape or never refused when the petitioner had physical sexual relationship and both were for 4 hours at the occurrence place. Further perusal of evidence P.W.1 it is clear that



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she knew about pregnancy within two months, but she did not lodge any complaint and further deposed that she would not give complaint if the fetus aborted. During the course of argument, the learned counsel specifically relied on the following evidence of P.W.1, who deposed as follows:

“2015-ம் வருடம் 3ம் மாதத்தில் நான் அவ்வாறு வேலை பார்த்து வந்ததில் எங்களுக்குள் பழக்கம் ஏற்பட்டது. எதிரி என்னை திருமணம் செய்து கொள்வதாக என்னிடம் சொன்னார். நான் அதற்கு மெதுவாக திருமணம் செய்து கொள்ளலாம் என்று சொன்னேன்..... செவக்காட்டில் 4 மணி நேரம் இருந்தோம். எதிரி என்னை தப்பாக நடக்க முயற்சி செய்யும் போது நான் கத்தி கூப்பாடு போடவில்லையென்றாலும் அவரிடமிருந்து தப்பிக்க எதுவும் முயற்சி செய்யவில்லை என்றாலும் சரிதான். செவக்காட்டில் நடந்த விபரத்தை என்னுடைய அப்பா அம்மாவிடமோ தோழிகளிடமோ கூறவில்லை என்றால் சரிதான். நான் அங்கு நடந்த சம்பவத்திற்கு எந்தவிதமறுப்பும் தெரிவிக்கவில்லை என்றால் சரிதான்.....எனக்கு 2 மாதத்திலேயே நான் கர்ப்பமாக இருப்பது எனக்கு தெரியும். நான் கர்ப்பமாக இருக்கும் விசயம் குறித்து உடனடியாக காவல்நிலையத்தில் எந்தவித புகாரும் கொடுக்கவில்லை என்றால் சரிதான்.....மருத்துவமனையில் மருத்துவர் கருவை கலைத்திருந்தால் புகார் எதுவும் கொடுத்திருக்க மாட்டோம் என்றால் சரிதான்.....சேவு கம்பெனியில் வேலை பார்க்கும்போதும் தீப்பெட்டி கம்பெனியில் வேலை பார்க்கும்போதும் அங்குள்ள ஆண்களுடன் எனக்கு நல்ல பழக்கம் உண்டு என்றால் சரிதான்.....”.



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However, while considering the citations relied on both sides, these are to be decided while deciding the appeal on merits. However, the learned counsel for the petitioner pointed out certain infirmities and inconsistencies in this case and also certain admissions. The fact remains that there are arguable points involved in this criminal appeal as stated supra and further the criminal appeal is not likely to be taken up for final hearing in the near future and that the petitioner/appellant is in prison for nearly seven months from the date conviction. The petitioner says that he has family and has to maintain his family members. In the above circumstances, this Court is inclined to consider the relief sought in this petition and holds that the petitioner herein is entitled to the relief of grant of suspension of sentence.

8. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended till the disposal of the appeal on the following conditions:-

(i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned II Additional Sessions Judge (PCR), Tirunelveli.

(ii) 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 to ensure their identity; and



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(iii) The petitioner shall appear before the trial Court on first working day of every week at 10.30 a.m., until further orders.

sd/-
22/11/2023

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23/11/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

VSD

To

1.The II Additional Sessions Judge (PCR), Tirunelveli District.

2.The Deputy Superintendent of Police,
Puliyangudi Sub Division,
Puliyangudi Police Station.

3.The Superintendent,
Central Prison,
Palayamkottai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC to M/s.K.PRABHU, Advocate, SR.No.52622(F), dated 23.11.2023.

ORDER
IN
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in
CRL A(MD) No.386 of 2023
Date :22/11/2023



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ED/ /SAR- (23/11/2023) 10P / 6C

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