



WEB COPY

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

Friday, the Ninth day of December Two Thousand Sixteen
PRESENT

The Hon`ble Mr.Justice B.GOKULDAS

CRL MP(MD) No.11340 of 2016

IN

CRL A(MD) No.55 of 2016

MURUGAN

... PETITIONER/APPELLANT/1ST ACCUSED

Vs

THE STATE OF TAMIL NADU REP. BY
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
NAGERCOIL, KANYAKUMARI DIST.

CR.NO.12 OF 2013

... RESPONDENT/RESPONDENT/COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence imposed by the Sessions (Fast Track Mahila Court) Nagercoil, Kanyakumari District dated 29.01.2016 in S.C.No.113 of 2013 and enlarge the petitioner on bail, pending disposal of the main Appeal and thus render justice.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.N.DILIP KUMAR, Advocate for the petitioner and of M/S.P.KANNITHEVAN, Govt.Advocate(Crl.Side) on behalf of the Respondent the court made the following order:-

Petitioner/ Accused No.1 in S.C.No.113 of 2013, on the file of learned Sessions Judge (Fast Track Mahila Court), Nagercoil, Kanyakumari District, seeks appeal bail under Section 389(i) of Cr.P.C.

2. After trial, the Petitioner/Accused No.1 has been convicted and sentenced as under:

Conviction	Sentence
Section 4 of the Protection of Children from Sexual Offences Act, 2012	7 years R.I. + Fine Rs.5,000/-, i/d 6 months R.I.

3. The learned Counsel for the petitioner submitted that there are very many legal infirmities in the conviction recorded by the Trial Court and they are required to be revised. He further submitted that the petitioner is innocent and he has not committed any offence. The petitioner has been in jail for more than 10 months. He further submitted that there are serious contradictions in the version of PW2 given before the learned



Magistrate under Section 164 Cr.P.C. and her evidence before the Trial Court and further, PW2 herself went to the extent of denying her statement recorded under Section 164 Cr.P.C. Moreover, according to Forensic report/Ex.P4, Accident Register/Ex.P3 and Wound Certificate/Ex.P11, there is no sexual assault upon PW2. Further, the learned counsel for the petitioner submitted that the swab analysis did not support the prosecution case. He further added that delay has occurred in lodging the complaint and the complainant himself deposed contradictory upon the lodging of his complaint. The learned counsel further contended that there is prima facie case in favour of the petitioner. In the above circumstances, the petitioner may be granted bail.

4. The learned Government Advocate (Criminal Side) submitted that appreciating the evidence adduced, the Trial Court has rightly convicted and appropriately sentenced the petitioner. Further, this Court after considering the voluminous evidence against the petitioner has rightly dismissed his earlier bail petition and now there is no change of circumstances. Hence, prays for dismissal of this petition.

5. In the facts and circumstances, perusing the impugned Judgment and the materials on record and also considering the submissions made on either side, I am of the view that certain eminently arguable points are involved in this criminal appeal. They are required to be examined in detail in the main criminal appeal. Further, it will take some time for the disposal of the criminal appeal. Further, now the petitioner was confined at Central Prison, Palayamkottai, for more than 10 months by which, the necessity to consider this petition arises. On considerations, ordered as under:

- (i) appeal bail granted.
- (ii) Substantial sentence alone is suspended on condition that the petitioner shall execute a bond for Rs.20,000/- (Rupees twenty thousand only) with two sureties for the likesum each to the satisfaction of the learned Judicial Magistrate No.II, Nagercoil.
- (iii) The petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m., until further orders.

Post the Criminal Appeal on 09.01.2017

sd/-

09/12/2016

/ TRUE COPY /

Sub-Assistant Registrar (C.S.1)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

1 THE SESSIONS JUDGE,
(FAST TRACK MAHILA COURT),
NAGERCOIL,
KANYAKUMARI.

2 THE JUDICIAL MAGISTRATE NO.II
NAGERCOIL.

3 -DO THROUGH-
THE CHIEF JUDICIAL MAGISTRATE,
KANYAKUMARI AT NAGERCOIL.

4 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
NAGERCOIL, KANYAKUMARI DT.
CR.NO.12 OF 2013

5 THE ADDL.PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

6 THE SUPERINTENDENT
CENTRAL PRISON, PALAYAMKOTTAI.

+1. C.C. to M/S.N.DILIP KUMAR Advocate SR.No.80332

ORDER
IN
CRL MP (MD) No.11340 of 2016
IN
CRL A (MD) No.55 of 2016
Date :09/12/2016

ANR/CK/09.12.2016/3P/8C