



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

Thursday, the Seventh day of April Two Thousand Sixteen

PRESENT

The Hon`ble Mr Justice V.S.RAVI

CRL MP(MD) No.1343 of 2016

IN

CRL A(MD) No.332 of 2015

MUTHURAJ

..APPELLANT/SOLE ACCUSED

Vs.

STATE REP.BY
THE INSPECTOR OF POLICE
KADAMBUR POLICE STATION,
THOOTHUKUDI DISTRICT.
(CRIME NO. 3 / 2015)

..RESPONDENT/COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to call for the records in Special Sessions Case No.11 of 2015 on the file of the Learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi, Thoothukudi District, dated 18.09.2015 and set aside the judgment dated 18.09.2015 and Acquit the Appellant of the charges leveled against him, pending disposal of the Crl.A(MD)No.332/2015.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.A.THIRUVADI KUMAR, Advocate for the petitioner and of Mr.P.KANDASAMY, Government Advocate (Crl.Side) on behalf of the Respondents, the court made the following order:-

This is an application filed by the petitioner/Appellant/Sole Accused to enlarge him on bail by suspending the sentence imposed on him in Special Case No.11 of 2015, dated 18.09.2015, on the file of the learned Sessions Judge, Mahalir Neethimandram(Fast Track Mahila Court), Thoothukudi, Thoothukudi District, pending disposal of the above Criminal Appeal.

2.It is stated in the affidavit enclosed along with the Petition that the evidence of P.W.2 does not disclose the necessary ingredients for sexual offence committed by the Petitioner/Appellant/Sole Accused and it is the consistent case of P.W.2 that they have stayed along with the family of the Petitioner/Appellant/Sole Accused herein. Furthermore, P.W.2 has clearly admitted in her evidence that they have got, love affair and they have also voluntarily surrendered before the Police. Hence, right from the threshold, the prosecution has suppressed the true version, which happened to be the case of elopement by the victim as a result of love affair. Further, it is pointed out that there is no proper investigation and there are infirmities in the procedure followed by the prosecution which goes to the root of the matter. Further, it is pointed out in the Petition that the Petitioner has also enjoyed the benefit of bail during the course of trial and there is no violation of any conditions imposed as against the Petitioner/Appellant/Sole Accused.



3. Further, it is reported that the Petitioner/Appellant/Sole Accused has paid the fine amount of Rs.3,000/- vide Receipt No. A 105434, dated 21.09.2015, to the credit of Spl. Case No.11 of 2015, on the file of Mahalir Neethimandram, Fast Track Mahila Court, Thoothukudi, Thoothukudi District.

4. Further, it is pertinently point out in the grounds of appeal that the prosecution has suppressed the material evidence in favour of the Petitioner/Appellant/Sole Accused and has put forward a different version and also, there is enormous delay in lodging the First Information Report and that, also would establish a serious doubt in the case of the prosecution. In support of the various grounds raised by the Petitioner/Appellant/Sole Accused, he has enclosed in the index to the typed-set of papers, the evidences of P.W.1 to P.W.14.

5. On a perusal of the entire materials available on record, it is found that there are certain force in the grounds made in the memorandum of appeal and that the Petitioner/Appellant/sole Accused has made out a *prima facie* case to grant suspension of sentence as sought for. Further, in the grounds of appeal, the Petitioner/Appellant/Sole Accused has raised 7 grounds challenging the impugned judgment passed by the trial Court.

6. On a careful consideration of the materials available on record, it is seen that there are arguable points in the present appeal. Further, when the appellate Court finds that due to practical reasons, appeal cannot be disposed of expeditiously, the appellate Court must bestow special concern in the matter of suspending the sentence, as prayed for in the present petition, so as to make the appeal right, meaningful and effective. Otherwise, the very valuable right of appeal would be an exercise in futility by efflux of time.

7. From the submissions made on behalf of the Petitioner/Appellant/Sole Accused and in view of the various grounds raised in the memorandum of Criminal Appeal, this Court finds that there are substantial and arguable points in the present case. Further, it is also seen that if certain stringent conditions are imposed, there is no chance for the accused to abscond. Further, after hearing the main appeal alone, the correct and proper finding in the main case can be given.

8. Further, it is seen that the various points raised in the grounds of appeal require an in-depth/thread-bare examination at the time of final hearing of the main appeal and also on going through the various grounds raised in the memorandum of Criminal Appeal, at this stage, this Court, to prevent aberration of justice, suspends the substantial sentence of imprisonment alone pending disposal of the above Criminal Appeal with the following conditions:

i) the Petitioner/Appellant/Sole Accused shall be released on bail on his executing a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties for a like-sum to the satisfaction of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi, Thoothukudi District;

<https://hcservices.ecourts.gov.in/hcservices/>
ii) the Petitioner/Appellant/Sole Accused shall appear before the said Court once in 15 days viz., first working day of every first and third week of every English Calendar month, until further orders,

failing which, the said Court is directed to inform about the details of failure committed by the Petitioner/Appellant/Sole Accused in complying with the said conditions, to the Registry of this Court, forthwith.

iii) the Petitioner/Appellant/Sole Accused shall furnish the present full details of his residential address along with copies of the family ration card/Aadhar Card/voter ID card issued by the Election Commission of India and also phone numbers (mobile/land-line), if any, to the said Court in the form of an affidavit, after serving an advance true copy of the same to the respondent/police; and

iv) on receipt of the true copy of the said affidavit, the respondent/police is directed to verify the veracity of the particulars given in the said affidavit and also liberty is granted to respondent to take appropriate follow up action, in accordance with law.

sd/-

07/04/2016

/ TRUE COPY /

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

TO

- 1 THE SESSIONS JUDGE, MAHALIR NEETHIMANDARAM (FAST TRACK MAHILA COURT), THOOTHUKUDI, THOOTHUKUDI DISTRICT.
- 2 THE INSPECTOR OF POLICE, KADAMBUR POLICE STATION, THOOTHUKUDI DISTRICT.
- 3 THE ADDL. PUBLIC PROSECUTOR, MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- 4 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI.

+1. C.C. to M/S A. THIRUVADI KUMAR Advocate SR.No.19830

ORDER IN
CRL MP (MD) No.1343 of 2016 IN
CRL A (MD) No.332 of 2015
Date : 07/04/2016

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