



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

Thursday, the Thirty First day of March Two Thousand Sixteen

PRESENT

The Hon`ble Mr Justice V.S.RAVI

CRL MP(MD) No.1452 of 2016

IN

CRL A(MD) No.31 of 2016

SENTHIL KUMAR

... PETITIONER/APPELLANT/ACCUSED

Vs

STATE REP BY THE INSPECTOR OF POLICE
THUVARANKURICHI POLICE STATION,
TRICHY CITY,
CR NO. 260/2013.

... RESPONDENT/RESPONDENT/COMPLAINANT

Petition filed under Section 389(1) of Cr.P.C. praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to SUSPEND THE SENTENCE imposed on the Petitioner by the Sessions Judge, Mahila Court, Tiruchirapalli made in Spl. S.C. NO. 12/2014 dated 08.01.2016 and release the Petitioner on bail pending disposal of the above Criminal 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.ANANDAKUMAR, Advocate for the petitioner/Appellant and of MR.P.KANDASAMY Additional Public Prosecutor on behalf of the Respondent the court made the following order:-

This is an application filed by the petitioner/Appellant/Accused to suspend the sentence imposed on the Petitioner by the learned Sessions Judge, Mahila Court, Tiruchirappalli, in Special S.C.No.12 of 2014, dated 8.1.2016 and to release the Petitioner on bail, pending disposal of the above Criminal Appeal.

2.It is stated in the affidavit enclosed along with the Petition by the uncle of the Petitioner/Appellant/Accused that the Appellant has preferred the Criminal Appeal against the conviction granted by the trial Court and it is also stated that the fine amount has already been paid. Further, it is pointed out that the trial Court has committed an error in convicting the Petitioner/Appellant/Accused under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and under Section 451 of IPC. Further, the trial Court failed to note that there is already a dispute between the Petitioner/Appellant/Accused and the owner of



Kurinji Hotel where the Petitioner/Appellant/Accused worked already and due to that motive, P.W.2 has been convinced by the Hotel Owner to give a false complaint with the aid and assistance of the victim girl namely P.W.2, who is also working in Kurinji Hotel. Further, the learned counsel for the Petitioner/Appellant/Accused has drawn the attention of this Court to the evidence of Doctor-P.W.15, who has examined the victim girl, enclosed in page 51 of the typed-set of papers, wherein, the Dr.Thiruselvi who has examined the victim girl has categorically stated that there is no internal or external injury found in the body of the victim girl and no semen has been found in the private part of the victim girl and there is no external injury and accordingly the Doctor has issued the Accident Register-Ex.P12 and Ex.P:13-Discharge Summary. On that ground only, it is clearly pointed out in the grounds of appeal that the prosecution has failed to prove the case as against the Petitioner/Appellant/Accused, beyond reasonable doubts. Further, the Appellate Court has also failed to consider that there is delay in preferring the complaint and even the Section 161 statement of the witnesses have been examined only, after three and half months, from the date of occurrence and though, the delay has been admitted by the prosecution, there is no acceptable explanation given by the prosecution. Further, it is pointed out that the date of occurrence 25.12.2013 which is a public holiday and whereas the case of the prosecution is that P.W.2 after attending school and thereafter played in-front of the house before the occurrence has taken place. Further, in order to prove the permanent residence of the accused, the accused has produced the Family Card, and also the Aadhar Card issued by the concerned Authorities.

3.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/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/Accused has raised 10 grounds challenging the impugned judgment passed by the trial Court.

4..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.

5.From the submissions made on behalf of the Petitioner/Appellant /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.

6. Further, it is seen that the various points raised in the grounds of appeal requires 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/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, Mahila Court, Tiruchirappalli;

ii) the Petitioner/Appellant/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 in complying with the said conditions, to the Registry of this Court, forthwith.

iii) the Petitioner/Appellant/Accused shall furnish the present full details of his residential address along with copies of 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/-
31/03/2016

/ TRUE COPY /

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

TO

- 1 THE SESSIONS JUDGE, MAHILA COURT, TIRUCHIRAPALLI
- 2 THE INSPECTOR OF POLICE
THUVARANKURICHI POLICE STATION, TRICHY CITY
- 3 THE ADDL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- 4 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY
- +1. C.C. to M/S N.ANANDAKUMAR Advocate SR.No.18204

ORDER IN

CRL MP(MD) No.1452 of 2016 IN
CRL A(MD) No.31 of 2016

Date : 31/03/2016