



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

Friday, the Fourth day of March Two Thousand Sixteen

PRESENT

The Hon`ble Mr Justice V.S.RAVI

CRL MP (MD) No.1991 of 2016

IN

CRL A (MD) No.77 of 2016

MUTHUKANI

..PETITIONER/ACCUSED NO.1

Vs.

STATE REP.BY

THE INSPECTOR OF POLICE

ALL WOMEN POLICE STATION,

KADAMBUR POLICE STATION,

THOOTHUKUDI DISTRICT.

CR. NO.4/2014

... RESPONDENT/COMPLAINANT

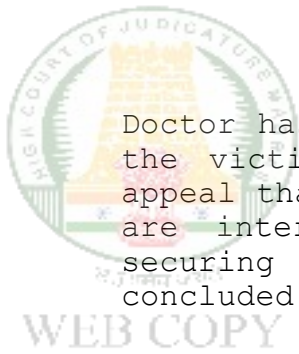
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence of imprisonment imposed on the petitioner judgement dated 23.2.2016 made in S.C. No.35 of 2015 on the file of the Sessions Judge cum Mahila Court Thoothukudi and enlarge the petitioner on bail pending disposal of the above CRL A (MD) No.77 of 2016.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of MR.R.ANAND for MR.P.SAMUEL GUNASINGH, Advocate for the petitioner and of MR.P.KANDASAMY, Government Advocate (Crl.Side) on behalf of the Respondent, the court made the following order:-

This is a petition filed by the petitioner/ appellant/A1 to suspend the sentence imposed on him in S.C.No.35 of 2015 dated 23.02.2016 by the learned Sessions Judge cum Mahila Court, Thoothukudi, pending disposal of the criminal appeal.

2.It is clearly stated in the affidavit enclosed with the petition by the brother of the petitioner that there is no specific incriminating material against the petitioner and the judgment of the trial Court suffers from various infirmities. Further, it is alleged in the affidavit that the petitioner is ready and willing to furnish substantial sureties for his appearance before the Court and he will not abscond. Further, it is stated that the petitioner is the only breadwinner of his family.

3.Further, in the grounds of appeal, it is stated that the testimony of P.W.1 cannot be relied upon and it is self contradictory. In the grounds of appeal, it is stated that P.W.1 has accepted in the cross examination that only with the consent, the appellant has done the act of the sexual intercourse with the victim and the evidence of P.W.1 is self contradictory. Further, P.W.9



Doctor has stated that there are no external injuries on the body of the victim/P.W.1. Further, it is pointed out in the grounds of appeal that all the witnesses examined on the side of the prosecution are interested witnesses and they are very much interested in securing conviction of the petitioner/Appellant and the same can be concluded from the statements made by them.

4. Further, it is stated that the evidence of P.W.1 is highly artificial and at any angle, the conviction tendered by the trial Court suffers from illegality and perversity and needs inference by this Court. In order to establish the said contention along with the memorandum of appeal, the learned counsel for the petitioner has pointed out the pertinent observation made in the impugned judgment of the trial Court.

5. Considering the submissions made on behalf of the petitioner/Appellant 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, 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.

6. 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.

7. Further, it is seen that various points raised in the grounds of appeal require an indepth/threadbare 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 shall be released on bail on her executing a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties for a likesum to the satisfaction of the learned Judicial Magistrate No.1, Kovilpatti;

ii) the petitioner/appellant shall appear before the said Court once in 15 days, viz., the first working day of first week and the first working day of third week until further orders, failing which the said Court is directed to inform about the details of failure committed by the petitioner in complying with the said conditions, to the Registry of this Court, forthwith.

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



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iv) on receipt of the true copy of the said affidavit, the respondent 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/-

04/03/2016

/ TRUE COPY /

Sub-Assistant Registrar

TO

- 1 THE JUDICIAL MAGISTRATE NO.I, KOVILPATTI.
- 2 -DO- THRO' THE CHIEF JUDICIAL MAGISTRATE, TUTICORIN.
- 3 THE SESSIONS JUDGE CUM MAHILA COURT, THOOTHUKUDI.
- 4 -DO-THRO' THE PRINCIPAL SESSIONS JUDGE, THOOTHUKUDI.
- 5 THE INSPECTOR OF POLICE, ALL WOMEN POLICE STATION,
KADAMBUR POLICE STATION, THOOTHUKUDI DISTRICT.
- 6 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI.
- 7 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S P.SAMUEL GUNASINGH Advocate SR.No.2566

akm/07.03.2016/3p-9c/MP/AN/SAR-I

ORDER

IN

CRL MP (MD) No.1991 of 2016

IN

CRL A (MD) No.77 of 2016

Date :04/03/2016