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

Thursday, the Twenty Fourth day of November Two Thousand Sixteen
PRESENT

The Hon`ble Mr.Justice A.M.BASHEER AHAMED

CRL MP(MD) No.9344 of 2016

IN

CRL A(MD) No.342 of 2016

RAJKUMAR

... APPELLANT/SOLE ACCUSED

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
KARAIKUDI[CR.22/14]

... 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 passed in S.C.No.72/14 the learned Sessions Judge Mahila Fast Track, Sivagangai and enlarge the petitioner/appellant/accused on bail till the disposal of the appeal

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.P.AJU TAGORE, Advocate for the petitioner and of MR.P.KANDASAMY, Government Advocate(Crl.Side) on behalf of the Respondent and the Court made the following order:-

This Criminal Miscellaneous Petition has been filed by the Petitioner / Appellant, praying to suspend the sentence of imprisonment imposed on him, by the learned Sessions Judge Mahila Fast Track, Sivagangai in S.C.No.72 of 2014, dated 10.02.2016, pending disposal of the above Criminal Appeal.

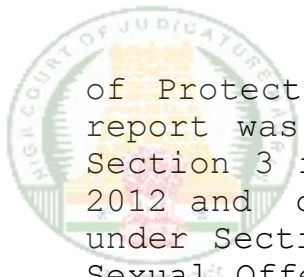
2. After trial, he has been convicted and sentenced as under:

Conviction	Sentence
Section 3 r/w 4 of Protection of Children from Sexual Offences Act, 2012	10 years R.I. + Fine Rs.5,000/-, i/d 6 Months R.I.

3. Fine amount imposed by the trial Court was paid and a copy of the receipt was also produced.

4. The Court heard the submissions made by the learned counsel appearing for the petitioner / appellant and the learned Government Advocate (crl.side) appearing for the respondent and also perused the materials available on record, including the impugned Judgment of the Court below and also the counter affidavit produced by the respondent.

5. The Petitioner is the sole accused in this case. The First Information Report was registered against the accused for an offence under Section 376 of IPC r/w. Section 5(i)(m) r/w Section 6



of Protection of Children from Sexual Offences Act, 2012. Final report was filed against the accused under Section 376 of IPC r/w Section 3 r/w 4 of Protection of Children from Sexual Offences Act, 2012 and charges were framed by the trial Court against the accused under Section 5(i)(m) r/w Section 6 of Protection of Children from Sexual Offences Act, 2012. After completion of trial, the accused has been convicted for the offence under Section 3 r/w 4 of Protection of Children from Sexual Offences Act, 2012.

6. Mr.P.Aju Tagore, the learned counsel appearing for the petitioner / accused contends that the age of the victim has not been proved by the prosecution and the trial Court relied on the evidence of P.W.13, Radiologist in this case for the proof of age and convicted the petitioner under the Protection of Children from Sexual Offences Act, 2012. The prosecution has not chosen to produce the birth certificate or school records to prove the age of the victim, since prosecution states that the victim is studying in the School. The learned counsel raised doubts regarding the alleged place of occurrence, identify of the petitioner by P.W.2 / victim, Non-examination of vital witnesses and also the medical evidence, which does not corroborate the evidence of P.W.2, by pointing out the contradictions and also certain omissions.

7. The records produced by the petitioner shows that there are certain important contradictions in the evidence of eye-witnesses. Considering the charge against the petitioner herein, I am of the view that certain arguable points are involved in this Criminal Appeal and they are required to be examined in detail in the main Appeal. Further, it will take some time for disposal of the Criminal Appeal. The appellant is confined in the Central Prison, Madurai from 10.02.2016. I see prima facie case in favour of the petitioner / appellant, for grant of an interim order of suspension.

6. On considerations, ordered as under:-

- (i) Appeal bail granted.
- (ii) Sentence of imprisonment ordered by the trial Court alone is suspended, till the disposal of the appeal.
- (iii) There shall be two sureties and they shall executed a bond for Rs.15,000/- (Rupees Fifteen Thousand Only) each to the satisfaction of the learned Mahila Judge, Sivagangai.
- (iv) The petitioner / appellant shall appear before the said Court on the first working day of every month at 10.30 am., until further orders.

sd/-

24/11/2016

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



TO

1 THE SESSIONS JUDGE, MAHILA FAST TRACK, SIVAGANGAI.

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

3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

4 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION, KARAIKUDI.

+1. C.C. to M/S.S.SABBANI KARBURA JOTHI, Advocate SR.No.72072.

ORDER IN
CRL MP(MD) No.9344 of 2016
IN CRL A(MD) No.342 of 2016
Date :24/11/2016

msm/mpa/ar2/24.11.16/p3/6c