



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

Monday, the Twenty First day of January Two Thousand Nineteen

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PRESENT

The Hon`ble Mr.Justice A.D.JAGADISH CHANDIRA

CRL MP(MD) No.297 of 2019

IN

CRL A(MD) No.5 of 2019

SHEIK ABDULLA

... PETITIONER/APPELLANT

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
CUMBUM SOUTH POLICE STATION,
THENI DISTRICT,
(CRIME NO.252/2016)

... RESPONDENT/RESPONDENT

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 by the Learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Theni in Spl.S.C.No.5/2017 on 15/11/2018 and to enlarge him on paid pending disposal of the main CRL A(MD) No.5 of 2019.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.L.SHAJI CHELLAN, Advocate for the petitioner and of MR.R.ANANDHARAJ, ADDITIONAL PUBLIC PROSECUTOR for Respondent the court made the following order:-

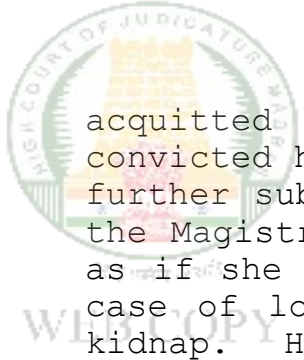
This Criminal Miscellaneous Petition has been filed by the appellant, praying to suspend the sentence of imprisonment imposed on him, by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Theni, pending disposal of the above Criminal Appeal.

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

Conviction	Sentence
Section 366 IPC	7 years R.I + Fine of Rs.5,000/-, i/d 12 month R.I.

3.Fine amount has been paid by the appellant.

<https://hcservices.courtsgov.in/hcservices/>
4.The learned counsel appearing for the appellant submitted that the appellant was tried for the offences under Section 366 IPC and Section 11(iv) r/w 12 POCSO Act and that the Court below



acquitted the appellant under the provisions of POCSO Act and convicted him for the offence under Section 366 IPC alone. He would further submit that even at the time of examining the victim before the Magistrate under Section 164 Cr.P.C., the victim has not stated as if she was physically abused by the appellant and that it is a case of love affair, which has been wrongly projected as case of kidnap. He would also submit that at the time of occurrence, the appellant was studying his final year degree and that the conviction order has been passed on 15.11.2018 and he is in custody for the past 38 days. He would further submit that the victim girl was not examined by the Child Welfare Officer and that the victim has also stated that she had gone at her own volition and she has not made any allegation as if the appellant kidnapped her. He would further submit that there are several arguable points on merits and that he has got a fair chance of succeeding the Appeal and would submit that it will take considerable time for the matter to be listed for final hearing and would pray that the substantive sentence of imprisonment alone may be suspended. He would also submit that the appellant was on bail during trial and that he has no misused the liberty granted to him.

5.The learned Additional Public Prosecutor appearing for the respondent would submit that the Trial Court has rightly convicted the accused on the basis of the evidence adduced by the prosecution during trial and the appellant is not having any prima facie case in the appeal. He would oppose grant an order of suspension of sentence.

6.This Court heard the submissions made by the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and also perused the materials available on record, including the impugned Judgment of the Court below.

7.Considering the above facts and circumstances of the case, this Court is of the view that there are certain arguable points involved in this Criminal Appeal and they are required to be examined in detail in the main Appeal. I see prima facie case in favour of the petitioner / appellant, for grant of an order of suspension.

8. On considerations, ordered as under:-

(i) Appeal bail granted.

(ii) Substantive 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 execute a bond for Rs.10,000/- (Rupees Ten Thousand Only) each to the satisfaction of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Theni.



(iv) The appellant shall appear before the said Court on the first working day of every month at 10.30 am., until further orders.

sd/-
21/01/2019

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

TO

1 THE SESSIONS JUDGE,
MAHALIR NEETHIMANDRAM (FAST TRACK MAHILA
COURT), THENI.

2 THE INSPECTOR OF POLICE
CUMBUM SOUTH POLICE STATION, THENI DISTRICT,

3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.B.ASHOK Advocate SR.No.977

ORDER
IN
CRL MP(MD) No.297 of 2019
IN
CRL A(MD) No.5 of 2019
Date :21/01/2019

TR/VR/SAR-II (24.01.2019) 5C 3P