



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

Tuesday, the Fifteenth day of September Two Thousand Twenty

PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and

The Hon`ble Mrs.Justice T.KRISHNAVALLI

CRL MP(MD) No.4279 of 2020

IN

CRL A(MD) No.274 of 2020

C.CHINNAPPAN

... PETITIONER/ APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
VALLAM POLICE STATION,
THANJAVUR DISTRICT.
IN CRIME No.7 OF 2014

... 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 imposed by the Judgment dated 27.02.2017 passed in S.C.No.303 of 2015 on the file of the learned Sessions Judge, Mahalir Court (Fast Mahila Court), Thanjavur and enlarge the petitioner on bail, pending disposal of the Criminal Appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of MR.E.SOMASUNDARAM, Advocate for the petitioner and of MR.R.ANANDARAJ, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

(Order of the Court was made by K.KALYANASUNDARAM, J)

The sole accused in S.C.No.303 of 2015 was convicted for the offences under Sections 376(2)(I), 506(i) and 324 IPC by the learned Sessions Judge, Mahalir Court, (Fast Mahila Court), Thanjavur, by Judgment dated 27.02.2017. Challenging the said conviction and sentence, the present appeal has been filed. Pending appeal, the petitioner has also filed the present petition for suspension of the sentence imposed on him.

2.The case of the prosecution is that P.W.1 is the sister of P.W.2 and P.W.2 was deaf and dumb and she was found vomiting by P.W.1. When P.W.2 was taken to a Doctor, it was found that she was already conceived. Then, on enquiry, it was informed that the
~~services provided to the victim~~ and rape on P.W.2.

<https://hccs.cerpts.com/institutes>



3.Mr.E.Somasundaram, learned Counsel for the petitioner would argue that when the complaint was made on 31.07.2014, P.W.2 was pregnant of nine months viz., 34 weeks, but the delay was not properly explained by the prosecution. It is also contended that P.W.1 and P.W.2 are residing under the same roof and if the accused committed rape without her consent, it would have been known to P.W.1 and her other family members. The learned counsel placing reliance upon the decision of the Karnataka High Court reported in **1996 Crl.L.J page 771 (M.V.Mahesh vs. State of Karnataka)** would contend that DNA test is not reliable and instead of PCR Test, the prosecution should have conducted RFLP test and hence, the report of the DNA test cannot be relied on to convict the accused. It is also submitted that the Hon'ble Apex Court in **(2018)3 SCC (Cri) 212 [Sandeep vs. State of Orissa]** has observed that having regard to the period of custody suffered, the accused can be granted bail by suspending the sentence pending appeal.

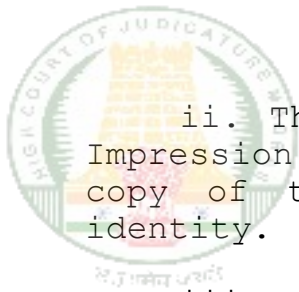
4.Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the respondent/State would submit that the accused and the victim are residents of the same area and injuries sustained by P.W.2 would prove that she was physically assaulted by the accused and threatened not to reveal the occurrence to any one and hence, there was a delay in lodging the complaint. It is further submitted that DNA test categorically proved that the accused is the father of the children born to P.W.2 on 08.11.2014 and hence, he prayed for dismissal of the petition.

5.Heard the rival submissions and perused the materials available on records.

6.In the matter on hand, it is submitted that P.W.2 was 27 years old at the time of the offence and P.W.1 has deposed in this case that the accused was having continuous sexual intercourse with P.W.2. It is further seen that even though the accused engaged an Advocate to defend the case, but no cross examination was done and the accused was denied opportunity of right to defend the case. It is to be noted that the accused has been in judicial custody for more than 6 years.

7.In the light of the above facts, this Court is inclined to suspend substantive sentence of imprisonment. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment imposed on the petitioner alone is suspended, subject to the following conditions:

i. The petitioner is directed to be enlarged on bail on executing a bond for Rs.10,000/- (Rupees ten thousand only) with two sureties, each for a like sum to the satisfaction of the Judicial Magistrate No.II, Thanjavoor.



ii. The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Committal Court may obtain a copy of their Aadhar card or Bank pass book to ensure their identity.

iii. The petitioner shall appear before the respondent police at 10.30 a.m., on every Sunday until further orders.

iv. The petitioner shall not disturb the victim / P.W.2 as per the undertaking given by the learned counsel for the petitioner.

sd/-
15/09/2020

/ TRUE COPY /

/ /2020

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

TO

1 THE SESSIONS JUDGE,
MAHALIR COURT,
(FAST MAHILA COURT), THANJAVUR.

2 THE JUDICIAL MAGISTRATE NO.II, THANJAVUR.

3 -DO- THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THANJAVUR AT KUMBAKONAM.

4 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
VALLAM POLICE STATION,
THANJAVUR DISTRICT.

5 THE SUPERINTENDENT,
CENTRAL JAIL, TRICHY.

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

+1 CC to M/s.E.SOMASUNDARAM, Advocate (SR-6429[I] dated
15/09/2020)

ORDER
IN
CRL MP(MD) No.4279 of 2020
IN
CRL A(MD) No.274 of 2020
Date :15/09/2020

SKN

<https://hcmr.cemur.in/Service/09.2020/3P/8C>