



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

Monday, the Thirtieth day of November Two Thousand and Twenty

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) No.5845 of 2020
IN
CRL A(MD) No.329 of 2020

THAVASIRAJAN

... PETITIONER/ APPELLANT/
SOLE ACCUSED

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
VIRUDHUNAGAR,
VIRUDHUNAGAR DISTRICT.
CRIME NO.4 OF 2016

... RESPONDENT/ RESPONDENT/
COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed on the appellants by the Judgment dated 06.10.2020 made in S.C.No.4 of 2016 on the file of Fast Track Mahila Court, Virudhunagar District at Srivilliputhur and enlarge him on bail pending disposal of the above criminal appeal.

PRAYER IN CRL A(MD) No.329 of 2020:

To call for the records relating to the judgment dated 15.09.2017 made in S.C.No.45 of 2016 on the file of the Sessions Judge, Mahila Court, Tiruchirapalli and set aside the conviction and sentence imposed against the appellants/ accused and allow above appeal by acquitting the accused.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.J.SULTHAN BASHA, Advocate for the petitioner and of Mr.S.CHANDRASEKAR, Additional Public Prosecutor on behalf of the Respondent, While admitting the CRL.A., the court made the following order:-

This petition has been filed to suspend the sentence imposed by the learned Sessions Judge, Mahalir Neethimandram, (Fast Track Mahila Court), Virudhunagar District, Srivilliputhur in S.C.No.4 of 2016 dated 06.10.2020, till the disposal of the appeal.



2.The case against the petitioner is that by giving false promise of marrying the petitioner repeatedly raped the defacto complainant at her house and she got pregnant and later the petitioner refused to marry her. A case was filed against the petitioner under Sections 417 and 376(2)(f)(n) of IPC and the chargesheet was taken on file as P.R.C.No.28 of 2015. After committal, the case was taken on file as S.C.No.4 of 2016. The Sessions Judge convicted the petitioner under Section 417 and 376 (n) of IPC and sentenced the petitioner under Section 417 of IPC to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months simple imprisonment and under Section 376(n) of IPC to undergo ten years rigorous imprisonment and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) in default to undergo six months simple imprisonment. Against the conviction and sentence imposed by the trial Court, the petitioner has filed a criminal appeal in Crl.A.(MD)No.329 of 2020 and along with the appeal, he filed this petition for suspension of sentence.

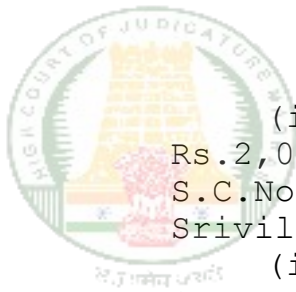
3.On the side of the petitioner, it is stated that except P.W.1 to P.W.3, there is no witness supporting the prosecution. The defacto complainant is now living with her earlier husband. The petitioner and the defacto complainant had only consent relationship. There is no question of rape. Both of them worked in fire works company. It is stated that the petitioner is ready to deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) in the name of the minor and there are much more valid points to be argued in the main appeal and prayed the sentence to be suspended till the disposal of the appeal.

4.On the side of the prosecution, it is stated that the prosecution has examined 17 witnesses and marked 8 documents. The petitioner has not examined any witness or marked any documents. The case was proved by the prosecution beyond all reasonable doubts. The trial Court rightly convicted the petitioner. The accident register of the victim was marked as Ex.P3 and the DNA report was marked as Ex.P5. The petitioner was already a married man having two children. The victim gave birth to a male child through the defacto complainant. If the petition is allowed, the petitioner may escaped the clutches of law and prayed the petition to be dismissed.

5.It is seen that the petitioner accepted to deposit some amount in favour of the minor child. The petitioner is in the custody from 06.10.2020 onwards. Considering the nature of the offence and considering the period of incarceration, this Court is of the view that the petitioner herein is entitled to the relief of suspension of sentence.

6.Accordingly, the substantive sentence of imprisonment alone is suspended till the disposal of the appeal and the petitioner is

released on bail on the following conditions:



(i)The petitioner is directed to deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs only) in the credit of S.C.No.4 of 2016 before the Fast Track Mahila Court, Srivilliputhur.

(ii)On such deposit, the trial Court (Fast Track Mahila Court, Virudhunagar) is directed to deposit the amount in a fixed deposit scheme in the name of the minor child, until the child attains majority.

(iii)The defacto complainant is entitled to withdraw the interest from the deposit once in three months for the maintenance of the minor child.

(iv)This deposit will not curtail any of the rights of the minor.

(v)The petitioner is directed to execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Judicial Magistrate, Fast Track Mahila Court, Virudhunagar District, Srivilliputhur ;

(vi)The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Trial Judge may obtain a copy of any valid identity proof to ensure their identity ;

(vi)The petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m., until the disposal of the appeal.

sd/-

30/11/2020

/ TRUE COPY /

/ /2020

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

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

TO

1 THE JUDGE,
FAST TRACK MAHILA COURT,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.



2 THE JUDICIAL MAGISTRATE,
FAST TRACK MAHILA COURT,
VIRUDHUNAGAR DISTRICT, SRIVILLIPUTHUR.

3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
VIRUDHUNAGAR,
VIRUDHUNAGAR DISTRICT.

4 THE SUPERINTENDENT, CENTRAL PRISON,
MADURAI.

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

+1 CC to M/s.J.SULTHAN BASHA, Advocate (SR-7776[I] dated 01/12/2020

ORDER
IN
CRL MP (MD) No.5845 of 2020
IN
CRL A (MD) No.329 of 2020
Date :30/11/2020

MS/PN/SAR-3/02.12.2020/4P.7C