



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

Friday, the Second day of July Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and
The Hon`ble Mr.Justice B.PUGALENDHI

CRL MP(MD) No.1380 of 2021
in
CRL A(MD)No.487 of 2019

M.MARIMUTHU

... PETITIONER/APPELLANT

Vs

STATE THROUGH
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
SRIVAIKUNDAM,
TUTICORIN DISTRICT.
CRIME No. 18/2015.

... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the Execution of Sentence by granting bail in Spl. S.C No. 38/2016 dated 10.09.2019 on the file of the Learned Sessions Judge , Mahalir Neethimandram (Fast Track Mahila Court) Thoothukudi District till the disposal of the Criminal Appeal.

Prayer in CRL A(MD)No.487 of 2019:

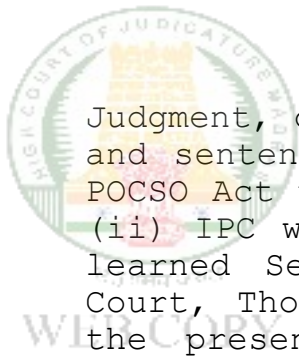
To call for the records from the trial Court i.e., the learned Sessions Judge for offences against women(Mahalir Needhimandram), Tuticorin, in Spl.S.C.No.38/2016, and set aside the order of conviction and sentence passed by the order dated 10.09.2019.

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.V.KATHIRVELU, Senior counsel for Mr.K.PRABHU, Advocate for the petitioner and of Mr.S.RAVI, Standing counsel for the State 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 Spl.S.C.No.38 of 2016 was tried for the offences punishable under Section 5(I)(j)(ii) r/w Section 6 of the Protection of Children from Sexual Offences Act 2012 and vide

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Judgment, dated 10.09.2019, he was found guilty for both the charges and sentenced to undergo life imprisonment under the provisions of POCSO Act with fine of Rs.5,000/- and 7 years R.I under Section 506 (ii) IPC with fine of Rs.1,000/- carrying default sentences by the learned Sessions Judge, Mahalir Neethimandram, Fast Track Mahila Court, Thoothukudi. Challenging the said conviction and sentence, the present appeal has been filed. Pending appeal, he seeks suspension of sentence.

2.The story of the prosecution is that the accused was a worker in a workshop at Naserath. The victim was 17 years old and she was a student of 12th Standard in Government Higher Secondary School "V" village. It is the prosecution case that the victim P.W.1 and the accused were neighbours and they had love affair. The accused had sexual intercourse on several occasions with P.W.1 by giving promise to marry her. Due to the act of the accused, P.W.1 became pregnant and a child was also born to her. When P.W.1 insisted the accused to marry, he refused and threatened her and thereby, he committed the offence as stated above.

3.Mr.V.Karthivelu, learned Senior Counsel appearing for the petitioner would submit that it is a case of love affair and even as per the complaint and 164 Statement of P.W.1, she has admitted that only with her consent, the accused had physical relationship with her. It is also argued that the alleged victim was 17 years old at the time of incident, hence, at the most, it would be an offence of giving false promise to marry P.W.1 and ingredients for the offence, for which, he was charged are not made out. It is further submitted that the petitioner has been in judicial custody for about two years and he is entitled for suspension of sentence.

4.Per contra, learned Standing Counsel appearing for the respondents Mr.S.Ravi would submit that this is the third application and the earlier applications had been dismissed and the case was directed to be posted for final disposal. It is the contention of the learned standing counsel that the prosecution has categorically proved the charges before the trial Court and DNA test conducted on the child of P.W.1 has also proved that the petitioner is the biological father of the child, hence, he is not entitled for suspension of sentence.

5.In the matter on hand, perusal of the evidence of P.W.1 would show that the accused was residing opposite to her house. The accused was 25 years and the victim (P.W.1) was 17 years at the relevant point of time. P.W.1 categorically admitted that for about 1-1/2 years, they had love affair and with her consent, they had sexual intercourse for about 1-1/2 years. P.W.1 has categorically stated in her 164 statement that after she became pregnant, she insisted the accused to marry her, instead, he married some other girl. She has also stated that till she was 8 months pregnant, she



complaint was lodged after two months the accused married another girl. School certificate and the evidence of Headmistress (P.W.8) also show that at the relevant point of time the victim was 17 years. It is relevant to note that earlier two applications came to be dismissed as withdrawn, not on merits.

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6. Considering the above aspects, we are of the opinion that the petitioner is entitled for suspension of sentence during pendency of this appeal. Accordingly, this 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 Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi.

ii. The petitioner shall appear before the Trial Court at 10.30 a.m. on the first working day of every English Calendar month until further orders.

iii. On any particular date, if the petitioner is not able to appear, leave is granted to the petitioner to file an application under Section 317 Cr.P.C. and appear before the trial Court on any other day, as determined by the trial Court, in lieu of the day on which they would absent.

sd/-
02/07/2021

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/ /2021
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.

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TO

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

2. THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.

3. THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
SRIVAIAKUNDAM, TUTICORIN DISTRICT.

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

ORDER
IN
CRL MP(MD) No.1380 of 2021
in
CRL A(MD)No.487 of 2019
Date :02/07/2021

skn
AE/MNR/SAR-V/08.07.2021/4P/5C