



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

Friday, the Thirtieth day of April Two Thousand and Twenty One

PRESENT

The Hon`ble Mrs.Justice T.KRISHNAVALLI

CRL MP(MD) No.1495 of 2021
in
CRL A(MD) No.85 of 2021

PACKIYARAJ

... PETITIONER/SOLE ACCUSED

Vs

STATE REP. BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, SATTUR,
VIRUDHUNAGAR DISTRICT.

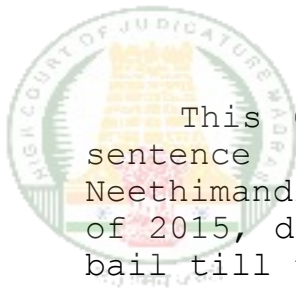
... RESPONDENT/COMPLAINENT

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 of imprisonment alone in SC.No.210 of 2015 dated 30.11.2020 on the file of the Learned Fast Track Sessions Judge, Mahalir Neethimandram, Virudhunagar District at Srivilliputhur and enlarge the Petitioner/Sole Accused on bail, till the disposal of the Criminal Appeal.

Prayer in CRL A(MD) No.85 of 2021:

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to admit this appeal and call for the records relating to the Judgment dated 30.11.2020 in S.C.No.210 of 2015 on the file of the Fast Track Sessions Judge, Mahalir Neethimandram, Virudhunagar District at Serivilliputhur and set aside the same by acquitting the appellant and allow this Criminal Appeal.

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.KARUPPASAMY PANDIAN.G., Advocate for the petitioner and of Mr.A.ROBINSON, Government Advocate (Crl. Side) for the respondent the court made the following order:-



This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the Fast Track Sessions Judge, Mahalir Neethimandram, Virudhunagar District @ Srivilliputhur, in SC No.210 of 2015, dated 30.11.2020 and enlarge the petitioner/sole accused on bail till the disposal of the criminal appeal.

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2. According to the prosecution, the de-facto complainant is the sister of mentally disabled, dumb and dumb victim and that on 29.04.2015, at about 02.00 pm, the accused trespassed into her house and gave sexual assault to her and on hearing screaming of the victim, PW2 and PW3 came inside the house and found the alleged occurrence and when they shouted, the accused ran away from the spot.

3. The learned counsel appearing for the petitioner/sole accused submitted that the petitioner was convicted by the trial court for the offence under section 450 IPC and sentenced him to undergo 7 years Rigorous Imprisonment and imposed a fine of Rs.2,000/-, in default of fine, to undergo further 3 months of Simple Imprisonment and for the offence under section 376 r/w 511 IPC, sentenced him to undergo 7 years RI each and imposed a fine of Rs.2,000/-, in default, to undergo further 3 months of Simple Imprisonment each and directed the sentences to run concurrently.

4. The learned counsel appearing for the petitioner/sole accused further submitted that the whole prosecution is only based on the evidence of the victim and Ex.P1 Complaint is not admissible in evidence and there is no evidence to prove that immediately after the occurrence, PW1 has enquired the victim about the occurrence and Ex.P1 is a fabricated one and in this case, the earliest complaint has suppressed by the prosecution and PW2 and PW3 are material witnesses and according to the prosecution, they have seen the occurrence and informed the same to PW1, however, they turned hostile and in this case, the medical evidence does not support the case of the prosecution and the victim has not sustained any injury. It is further submitted that the petitioner/sole accused is an innocent person and he has been falsely implicated in this case and that there are several infirmities in the prosecution case and there are contradictions in material particulars in the evidence of the prosecution witnesses and that the petitioner/sole accused is in jail since 30.11.2020 and prays for suspension of sentence.

5. It is submitted by the learned Government Advocate (Criminal side) appearing for the respondent/State that the trial court has rightly convicted the petitioner and there are enough materials available on record against the petitioner and there is no infirmity in the prosecution case and prays for dismissal of this petition.

6. This court has carefully considered the rival contentions put forth on either side and also perused the materials available on



7. In this case, the victim is a dumb and dumb. The victim was examined through interpreter. It is the contention of the petitioner/appellant that the victim is a dumb and dumb and PW1 is not an expert in understanding the sign language of the victim and there is no evidence to prove that after the occurrence, he enquired PW1 and hence, the complaint given by PW1 is not admissible in evidence.

8. Ex.P1 Complaint was carefully perused. It is stated in the complaint (Ex.P1) that after he came to know the occurrence from PW2 and PW3, who are the eye witnesses, he gave the complaint. But in this case, PW2 and PW3 turned hostile and did not support the case of the prosecution. The Doctor, who examined the victim was examined as PW10. PW10 stated during her evidence that the hymen was in tact and she found one abrasion below the private part of the victim and PW10 has not found any symptoms for rape.

9. The learned counsel for the petitioner/sole accused pointed out certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. The fact remains that there are arguable points involved in this criminal appeal and the petitioner/sole accused is in jail since 30.11.2020 and as such, this court is of the considered view that the petitioner/sole accused herein is entitled to the relief of grant of suspension of sentence with stringent conditions.

10. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal and the petitioner/sole accused is directed to be enlarged on bail on condition that he shall execute a bond for a sum of **Rs.10,000/- (Rupees Ten Thousand only)** with two sureties each for a like sum to the satisfaction of the the Fast Track Sessions Judge, Mahalir Neethimandram, Srivilliputhur and on further condition that the petitioner/sole accused shall appear before the said court daily twice I.e., at 10.30 am and 5.00 pm pending appeal.

sd/-
30/04/2021

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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.

TO

1. THE FAST TRACK SESSIONS JUDGE,
MAHALIR NEETHIMANDRAM, SRIVILLIPUTHUR.
2. THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION, SATTUR,
VIRUDHUNAGAR DISTRICT.
3. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP (MD) No.1495 of 2021
in
CRL A(MD) No.85 of 2021
Date :30/04/2021

AMS/VR/SAR-1/03/05/2021/4P/5C