



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

Monday, the First day of March Two Thousand and Twenty One

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) No.1683 of 2021
in
Crl.A.(MD)No.5 of 2021

KADAPPAN

... APPELLANT/ SOLE ACCUSED

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
THIRUMAYAM,
PUDUKKOTTAI DISTRICT.
CRIME NO.2 OF 2019.

... 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 of Imprisonment imposed by the learned Sessions Judge, Mahila Court, Pudukkottai in Spl.SC.No.8 of 2019 dt.15.12.2020 and enlarge the Petitioner/Appellant on bail, pending disposal of the above said Criminal Appeal.

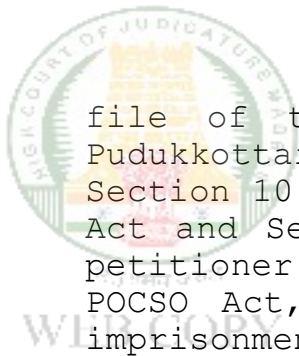
Prayer in Crl.A.(MD)No.5 of 2021:

To set aside the judgment and conviction dated 15.12.2020 by the learned Sessions Judge, Mahila Court, Pudukkottai in Spl.SC.No.8 of 2019 and acquit the Appellant.

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.D.RAMESHKUMAR, Advocate for the petitioner and of Mr.S.CHANDRASEKAR, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This petition has been filed to suspend the sentence imposed by the Sessions Judge, Mahila Court, Pudukkottai, made in Spl.S.C.No.8 of 2019, dated 15.12.2020 and to enlarge the petitioner on bail pending the disposal of the appeal.

2.The allegation against the petitioner is that he committed sexual assault against a 13 years old mentally challenged child. A case in Crime No.2 of 2019 was registered by the respondent police and the case was taken on file as Special S.C.No.8 of 2019, on the

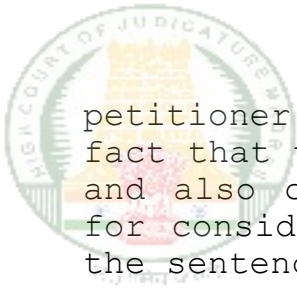


file of the Mahila Court, Pudukkottai. The Mahila Court, Pudukkottai, found the petitioner guilty under Section 9(1) r/w. Section 10 of POCSO Act, 2012, Section 9(k) r/w. Section 10 of POCSO Act and Section 3(1)(w)(i) of SC / ST Act and 506(i) I.P.C. The petitioner was convicted under Section 9(1) r/w. Section 10 of POCSO Act, 2012 and was sentenced to undergo 5 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo a further period of three months simple imprisonment and the petitioner was convicted under Section 9(k) r/w. Section 10 of POCSO Act and was sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo a further period of three months simple imprisonment and under Section 3(1)(w)(i) of SC / ST Act, the petitioner was sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo further period of three months simple imprisonment and under Section 506(i) I.P.C., the petitioner was sentenced to undergo two years rigorous imprisonment, by its judgment, dated 15.12.2020. Against the conviction and sentence the petitioner preferred an appeal in Crl.A.(MD)No.5 of 2021. Along with the Appeal the petitioner preferred a suspension of sentence petition earlier and the same was dismissed on 22.01.2021. This petition is filed by the petitioner for considering the suspension of sentence at the present stage.

3. On the side of the petitioner, it is stated that the complainant P.W.2 turned hostile and P.W.3, who is the husband of P.W.2 also turned hostile. The Doctor has deposed that there is no external injury and there is no abnormality in the scan report. There is no evidence of sexual assault. The statement under Section 164 Cr.P.C. Cannot be used for contradiction or for corroboration. It is further stated that the petitioner was in custody from 23.03.2019 to 27.01.2020, for 10 months during the trial and again, the petitioner is in custody from 15.12.2020 for the past 74 days and the petitioner has already undergone 12 months of imprisonment and prayed the sentence to be suspended.

4. On the side of the respondent, it is stated that the petitioner is aged about 69 years and the victim is a mentally challenged 13 years old girl, who belonging to Scheduled Caste. The prosecution has examined 15 witnesses (P.W.1 to P.W.15) and marked 15 documents (Ex.P1 to Ex.P15) and one Material Object (M.O.1). Disability Certificate was marked Ex.P5. The Statement of the victim was recorded under Section 164 Cr.P.C. and was marked as Ex.P14. Medical Certificate of the victim was marked as Ex.P.8. P.W.3 and P.W.13 clearly deposed and supported the case of the prosecution. The prosecution proved the case beyond reasonable doubts and that the petitioner / accused has committed a serious offence and prayed the petition to be dismissed.

5. It is seen that the petitioner is already in custody for 10 months and 74 days. Considering the fact that the



petitioner is in custody for the past 74 days and considering the fact that this petition is a second petition filed by the petitioner and also considering the fact that there are some arguable points for consideration in the appeal, this Court is inclined to suspend the sentence.

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6. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended and the petitioner is ordered to be released on bail on the following conditions:-

(i) the petitioner is directed to execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the Sessions Judge, Mahila Court, Pudukkottai.

(ii) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Trial Judge may obtain a copy of their valid identity card to ensure their identity.

(iii) 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 or until further orders.

sd/-

01/03/2021

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

TO

- 1 THE SESSIONS JUDGE, MAHILA COURT,
PUDUKKOTTAI.
- 2 THE INSPECTOR OF POLICE, ALL WOMEN POLICE STATION,
THIRUMAYAM, PUDUKKOTTAI DISTRICT.
- 3 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO:

THE SECTION OFFICER, CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1CC TO Mr.D.RAMESHKUMAR, Advocate, SR NO.1614

ORDER IN

CRL MP(MD) No.1683 of 2021 in

CrI.A.(MD) No.5 of 2021

Date : 01/03/2021

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<https://hmcvtse609a.gov.in/CaseServices/1683/2021/3P.7C>