



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.2951 of 2021

IN

CRL A(MD) No.186 of 2021

SENTHIL

... PETITIONER/APELLANT

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE,
RAJTHANI POLICE STATION,
THENI DISTRICT.
IN CRIME No.223 OF 2013

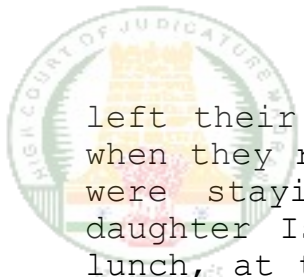
... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the Sentence imposed on the petitioner by the Mahalir Fast Track Court, Theni made in SC.No.53 of 2015 dated 31.07.2020 sentencing him for 10 years Rigorous Imprisonment. and release the petitioner on bail pending disposal of the above 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.K.APPADURAI, Advocate for the petitioner and of Mr.A.ROBINSON, Government Advocate(Crl.Side) on behalf of the Respondent, the Court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the conviction and sentence order passed by the Sessions Judge, Mahalir Fast Track Court, Theni in SC No.53 of 2015, dated 31.07.2020 and enlarge the petitioner/sole accused on bail, till the disposal of the criminal appeal.

2.According to the prosecution, the de-facto complainant was having three daughters and one son, her elder daughter was married, her 2nd daughter namely Murugeswari was suffering from mental illness, her 3rd daughter and her son were studying in a local school. On 19.11.2013, the de-facto complainant and her husband



left their 2nd daughter in the house and went to nearby village and when they returned to their house, they noticed that their daughters were staying in their uncle's house and on enquiry, their 3rd daughter Ishawarya informed them that she came to their house for lunch, at that time, when he pushed the house door and entered into their house, she seen that the accused was lying over her sister Murugeswari and was committing rape and on seeing her, the accused pushed her and ran away from the scene of occurrence.

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 376(2)(1) IPC and sentenced him to undergo 10 years Rigorous Imprisonment and imposed a fine of Rs.1,000/-, in default to undergo one year Rigorous Imprisonment and further ordered compensation of Rs.5,00,000/- under the Victim Compensation Scheme through the District Collector, Theni.

4.The learned counsel appearing for the petitioner/sole accused further submitted that the victim is not a mentally retarded and PW2 did not give any bites to the accused and did not push him aside preventing him from toughing her, amounts to giving consent since PW2 being 18 years of age is a consenting party and there is no ingredient of rape is made out and the petitioner is an innocent person and he has not committed any offence as alleged by the prosecution and prays that the petitioner may be granted 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 record.

7.In this case, PW12 stated during her evidence that the victim girl is a mentally retarded person. The victim was examined before the trial court with the help of psychiatrist. PW2 deposed that the accused raped her. PW2 had 60% of mental disability. The evidence of PW2 is enough. Further the Doctor, who examined the victim stated that the victim was subject to intercourse. PW3 and PW4, the sister and the brother of the victim girl stated during their evidence that when they pushed the door, they saw that the accused laid over the body of the victim. There is corroboration in the evidence of PW3 and PW4. The medical evidence is also corroborated with the evidence of PW2. The offence is grave in nature. Under these circumstance, this court is not inclined to grant suspension of sentence to the petitioner.



8. In fine, this Criminal Miscellaneous Petition fails and the same is dismissed.

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 SESSIONS JUDGE, MAHALIR FAST TRACK COURT,
THENI.
2. THE SUPERINTENDENT, CENTRAL PRISON,
MADURAI.
3. THE INSPECTOR OF POLICE,
RAJTHANI POLICE STATION, THENI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL MP(MD) No.2951 of 2021
IN
CRL A(MD) No.186 of 2021
Date : 30/04/2021

ER
PK/AKM/SAR-IV/19.05.2021 : 3P/5C