



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

Tuesday, the Twenty Ninth day of June 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.3582 of 2021
in
Crl.A.(MD) No.389 of 2020

A.MANO @ MANO MADASAMY

... APPELLANT/ SOLE ACCUSED

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
THALAMUTHU NAGAR POLICE STATION,
TUTICORIN.
CRIME NO.421 OF 2016

... 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 and grant bail to the Appellant/Sole Accused pending disposal of the Criminal Appeal before this Hon'ble Court against the judgment passed in Special S.C.No.201 of 2019, dated 20.10.2020 on the file of the Sessions Judge, Special Court for Protection of Children from Sexual Offences(POCSO Cases) Tuticorin transferred from Mahila Court(Fast Track) in Special S.C.No.52 of 2016, Tuticorin in Crime No.421 of 2016 on the file of the Respondent Police Station Pending disposal of the Appeal.

PRAYER IN Crl.A. (MD) No.389 of 2020:

To call for the records of the judgment passed in Special S.C.No.201 of 2019, dated 20.10.2020 on the file of the Sessions Judge, Special Court for Protection of Children from Sexual Offences (POCSO Cases) Tuticorin transferred from Mahila Court(Fast Track) in Special S.C.No.52 of 2016, Tuticorin in Crime No.421 of 2016 on the file of the Respondent Police station and set aside the Acquit the Appellant/ Sole Accued.

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.T.THIRUMURUGAN, Advocate for the petitioner and of Mr.S.RAVI, Standing Counsel for the Stateon behalf of the Respondent, the court made the following order:-



[Order of the Court was made by **K.KALYANASUNDARAM, J.**]

The sole accused in S.C.No.201 of 2019, on the file of the Special Court for POCSO Cases, Tuticorin was tried for the offence under Sections 366, 493 IPC and Section 5(L) r/w 6 of Protection of Children From Sexual Offences Act, 2012. He was convicted and sentenced to undergo life imprisonment under Section 5(L) r/w Section 6 of Protection of Children From Sexual Offences Act, with fine of Rs.5,000/- and acquitted for the offences under Sections 366 and 493 IPC. Challenging the said conviction, the present appeal has been filed. Pending appeal, he seeks for suspension of sentence.

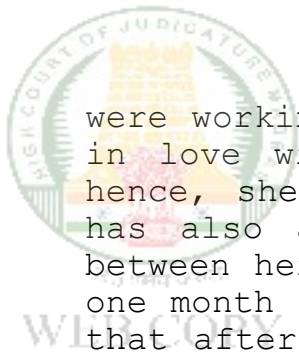
2.The story of the prosecution is that P.W.1 was a minor, aged about 15 years. On 14.06.2015, the accused kidnapped P.W.1 and by giving a false promise that he will marry P.W.1, had sexual intercourse. It is further case of the prosecution that though P.W.1 has not completed 18 years, he married her on 15.06.2016 and thereby, committed the offences.

3.The learned counsel for the petitioner would submit that at the relevant point of time, the petitioner was 22 years and P.W.1 was 16 years and both had fall in love with each other. It is further submitted that P.W.1 in her 164 statement, has categorically admitted that there was love affair between the accused and P.W.1 and they got married and they were living together for one month and thereafter, they were taken forcibly. In this regard, the learned counsel has drawn the attention of this Court to the evidence of P.W.1 and P.W.2, who is the mother of P.W.1. It is further submitted that now both the accused and P.W.1 got married and they are living with their respective spouse. It is further submitted that the petitioner has been in judicial custody for more than 8 months and hence, the sentence imposed on him may be suspended.

4.Per contra, the learned Standing Counsel appearing for the respondent vehemently opposed the petition contending that the accused and P.W.1 were working together in Spinning Mill. The accused having known that the P.W.1 is the minor, had kidnapped her with an intention to marry and also had physical relationship with P.W.1. It is submitted by the learned Standing Counsel that the charges against the accused have been categorically proved before the Trial Court and hence, he is not entitled for suspension of sentence.

5.Heard the rival submissions and perused the materials available on records.

6.In the instant case, P.W.2, who is the mother of P.W.1, has submitted evidence that the accused and her daughter (P.W.1) were working together in a spinning mill.



were working in a Spinning Mill for more than 3 years and they fell in love with each other. P.W.2 knew that both got married and hence, she did not lodge a complaint for about two months. P.W.1 has also admitted in her evidence that there was a love affair between her and the accused and they married and lived together for one month in a rented house at Kovilpatti. Further, she has stated that after registration of the case, she was kept in a Home, where she was assaulted to join with P.W.2. P.W.2 has also stated that there is no birth certificate to prove the age of her daughter. Perusal of the materials reveals that this is a case of love affair and they were at that point of time in prime age.

7.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, Special Court for Protection of Children from Sexual Offences (POCSO Cases), Tuticorin.

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/-

29/06/2021

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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,

SPECIAL COURT FOR PROTECTION OF CHILDREN

POCSO CASES, TUTICORIN.

<https://hcservices.mca.gov.in/>



2 THE JUDGE,
MAHILA COURT (FAST TRACK)
TUTICORIN.

3 THE SUPERINTENDENT, CENTRAL PRISON,
PALAYAMKOTTAI.

4 THE INSPECTOR OF POLICE
THALAMUTHU NAGAR POLICE STATION,
TUTICORIN.

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

+1 CC to M/s.T.THIRUMURUGAN, Advocate (SR-4253[I] dated
30/06/2021)

ORDER

IN

CRL MP(MD) No.3582 of 2021 in
Crl.A.(MD) No.389 of 2020

Date :29/06/2021

skn

MS/VR/SAR-1/02.07.2021/4P.7C