



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

Thursday, the Fifth day of August Two Thousand and Twenty One

PRESENT

**The Hon`ble Mrs.Justice T.KRISHNAVALLI**

CRL MP(MD) No.4164 of 2021  
in  
Crl.A(MD)No.256 of 2021

UDHAYAKUMAR

... PETITIONER/ APPELLANT/  
SOLE ACCUSED

Vs

STATE REP.BY  
THE INSPECTOR OF POLICE,  
ALL WOMEN POLICE STATION,  
ANDIPATTY, THENI DISTRICT.  
CRIME NO.13/2017

... RESPONDENT/ COMPLAINANT/  
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/appellant /accused in Spl.S.C.No.44/2017 dated 26/11/2019 on the file of the learned Sessions Judge, Fast Track Mahila Court, Theni and enlarge the petitioner on bail till the disposal of the appeal.

**PRAYER IN Crl.A(MD)No.256 of 2021:**

To call for the records relating to the judgment in Spl.S.C.No.44 of 2017 dated 26.11.2019 on the file of the learned Sessions Judge, Fast Track Mahila Court, Theni and set aside the same and acquit the appellant/ accused from of all charges leveled against the petitioner.

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.R.VENKATESWARAN, Advocate for the petitioner and of Mr.RMS.SETHURAMAN, Counsel for State(Criminal 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, Fast



Track Mahila Court, Theni, in Special S.C.No.44 of 2017, dated 26.11.2019 pending disposal of the criminal appeal.

2.The learned counsel appearing for the petitioner submitted that the petitioner was convicted by the trial court for the offence under section 8 of the Protection of Children from Sexual Offences Act, 2012 and 506(1) IPC and sentenced him to undergo 5 years RI and to pay Rs.10,000/-, as fine, in default to undergo 1 year SI; for the offence under 506(1) IPC, sentenced to undergo 2 years RI and to pay Rs.1,000/- as fine, in default to undergo 6 months SI.

3.The learned counsel appearing for the petitioner further submitted that the petitioner is an innocent person and he was falsely implicated in this case and that there are several infirmities in the prosecution case and there are contradictions in material particulars between the evidence of the prosecution witnesses and that the petitioner is in jail for more than three years and prays for suspension of sentence.

4.It is submitted by the learned Government Advocate (Criminal side) appearing for the respondent/State that the petitioner/accused committed sexual assault, while the victim was sleeping under the cot and the trial court on proper appreciation of evidence both oral and documentary, 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.

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

6.The learned counsel for the petitioner 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 further the criminal appeal is not likely to be taken up for final hearing in the near future and the petitioner is in jail for more than three year and as such, this court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

7.Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal and the petitioner 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 Sessions Judge, Fast Track Mahila Court, Theni, and further condition that the petitioner shall appear



before the said court daily twice I.e., at 10.30 am and 5.00 pm,  
pending appeal.

sd/-  
05/08/2021

/ TRUE COPY /

WEB COPY

/ /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,  
FAST TRACK MAHILA COURT, THENI.
- 2 THE INSPECTOR OF POLICE,  
ALL WOMEN POLICE STATION,  
ANDIPATTY, THENI 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.4164 of 2021  
in Cr1.A(MD)No.256 of 2021  
Date :05/08/2021

er  
MS/VR/SAR-3/10.08.2021/3P.5C