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

Friday, the Third day of December Two Thousand and Twenty One
PRESENT

The Hon'ble Mrs.Justice R.THARANI

CrI.MP(MD)No.7631 of 2021 in

CrI.A(MD)No.400 of 2021

JOSEPH PENITO

... PETITIONER/APPELLANT/ACCUSED

Vs

THE STATE REP. BY,
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
VADAMADURAI, DINDIGUL DISTRICT.

(CRIME NO. 427/2018, U/S 18 OF PROTECTION OF
CHILDREN FROM SEXUAL OFFENCES ACT, 2012)

... RESPONDENT/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 sentences passed in Special SC.No.17/2019 Dated 29.07.2021 on the file of the Fast Track Mahila Court, Dindigul and enlarge the petitioner on bail pending disposal of the above said Criminal Appeal.

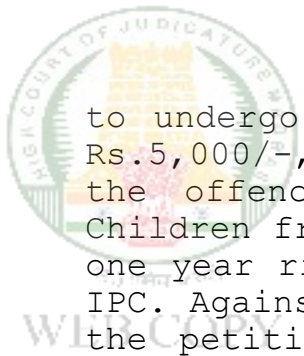
Prayer in CRL A(MD) No.400/ 2021 :

Pleased to call for records and to set aside the order passed in Special SC No.17 of 2019 dated 29.07.2021 on the file of the Fast Track Mahila Judge, Dindigul.

ORDER : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S. SASI.M., Advocate for the petitioner and of Mr.K.SANJAY GANDHI, Government Advocate (Criminal Side) on behalf of the Respondent, the court made the following order:-

This petition has been filed to suspend the sentence imposed by the Fast Track Mahila Court, Dindigul in Special SC.No.17/2019 dated 29.07.2021, till the disposal of the appeal.

2.The case against the petitioner is that on 18.08.2018, at about 06.30 pm, he misbehaved with a 9th standard school girl. A case was filed against the petitioner in Crime No.427/2018 under Section 18 of the Protection of Children from Sexual Offences Act, 2012 on the file of the Inspector of Police, Sanarpatti Police Station. Charge sheet was filed and the same was taken on file as Special SC.No.17/2019 on the file of the learned Judge, Fast Track Mahila Court, Dindigul. After full trial, the learned Judge found the petitioner guilty and convicted the petitioner and sentenced him



to undergo seven years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment for the offence under Section 18 r/w 3(a) r/w 4 of Protection of Children from Sexual Offences Act, 2012 and sentenced him to undergo one year rigorous imprisonment for the offence under Section 342 of IPC. Against the conviction and sentence imposed by the Trial Court, the petitioner has filed a Criminal Appeal before this Court in CrI.A.(MD)No.400 of 2021 and along with the appeal, he filed this petition for suspension of sentence.

3.On the side of the petitioner, it is stated that the Trial Court has altered the charges at the time of pronouncing the Judgment. The alteration of the Charge was not explained to the petitioner. No particulars were given to the petitioner after the alteration of charges. There was no injury to the victim girl. The complaint itself is a false one. There is a delay in lodging the complaint. The evidence of the victim is that on the date of occurrence itself, at about 09.00 pm, she was enquired in the Police Station. However, the complaint was filed only on the next date. The complaint was not recorded by a Woman Police. Medical Examination was not done within 24 hours. The consent of the relatives of the victim girl was not obtained for conducting the Medical Examination. The petitioner was in custody for a period of two months at the beginning stage of trial and the petitioner is in custody for the past four months, after pronouncing Judgment and prayed the sentence to be suspended till the disposal of the appeal.

4.On the side of the prosecution, it is stated that the offence is serious in nature. The petitioner was caught red handed by the public. The prosecution has examined 19 witnesses and marked 13 documents and proved the case beyond reasonable doubt. The petitioner is a threat to the civilized society and prayed the petition to be dismissed.

5.It is seen that there are some arguable points for consideration in the appeal. There is no possibility of the appeal to be taken up for hearing in the near future. The petitioner is in custody for the past four months. In view of the above circumstances, this Court is of the view that the petitioner herein is entitled to the relief of suspension of sentence.

6.Accordingly, the substantive sentence of imprisonment alone is suspended till the disposal of the appeal 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) each with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Judge, Fast Track Mahila Court, Dindigul ;



(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 any valid identity proof to ensure their identity ;

(iii) the petitioner shall appear before the respondent Police daily at 10.30 am until further orders ;

sd/-
03/12/2021

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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 JUDGE,
FAST TRACK MAHILA COURT, DINDIGUL.
2. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
3. THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
VADAMADURAI, DINDIGUL DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN
Crl.MP(MD)No.7631 of 2021
in
Crl.A(MD)No.400 of 2021
Date :03/12/2021

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USK/PN/SAR-IV/ (06.12.2021) 3P-5C