



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

Wednesday, the Twenty Second day of December Two Thousand and Twenty One

PRESENT

The Hon`ble Mrs.Justice R.THARANI

Crl.M.P. (MD) No.10482 of 2021
in
Crl.A. (MD) No.186 of 2021

SENTHIL

... PETITIONER/ APPELLANT

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
RAJTHANI POLICE STATION,
THENI DISTRICT.
(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 Honourable Mahalir Fast Track Court Theni made in SC.No.53 of 2015 sentencing him for 10 years Rigorous Imprisonment and release the petitioner on bail pending disposal of the above criminal Appeal.

Prayer in Crl.A.(MD) No.186 of 2021:

To call for the records and set aside the judgment of conviction dated 31.07.2020 passed by the Honourable Mahalir Fast Track Court, Theni, made in SC.No.53 of 2015 convicting the petitioner for the alleged offence under sec.376(2)(1)IPC and sentencing him for 10 years Rigorous Imprisonment and imposing a fine of Rs.1000/-, in default to undergo one year Rigorous Imprisonment and further ordering compensation of Rs.5,00,000/- under the Victim compensation scheme through the District Collector, Theni, and allow this Criminal Appeal pending on the file of this Hon`ble Court.

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.K.SANJAY GANDHI, Government Advocate on behalf of the Respondent, the court made the following order:-

This petition has been filed to suspend the sentence imposed against the petitioner in S.C.No.53 of 2015, dated 31.07.2020, on the file of the Mahalir Fast Track Court, Theni, pending disposal



2.The allegation against the petitioner is that the petitioner raped the second daughter of the defacto complainant, who is mentally retarded. A case in Crime No.223 of 2013 was registered by the respondent police and later the case was taken on file as S.C.No.53 of 2015 on the file of the Mahalir Fast Track Court, Theni. The Sessions Judge found the petitioner guilty under Section 376(2)(1) of IPC and sentenced him to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo a further period of one year rigorous imprisonment. Against the conviction and sentence, the petitioner filed an appeal in Crl.A. (MD)No.186 of 2021. Along with the appeal, he has filed a petition in Crl.M.P.(MD)No.2951 of 2021 for suspension of sentence and the petition was dismissed. Again the petitioner has filed the present application for suspension of sentence pending disposal of the said appeal.

3.On the side of the petitioner, it is stated that medical examination was done only after a delay of three days. Under Section 19 of the POCSO Act, the medical examination of the victim should be done within 24 hours from the time of occurrence. The provision of the POCSO Act was not properly followed by the prosecution. It is further stated that the evidence of the Doctor reveals that the medical examination was done on one Saranya and not on the victim. The evidence of the Doctor clearly proves that the hymen of the victim was ruptured and the rupture was an old one. The chemical examination reports regarding the clothes of the petitioner and the accused were not supporting the prosecution. The evidence of Scientific Assistant reveals that there was no incriminating materials available in the clothes. the same. The entire evidence of the victim is based on her dreams and not in reality. The mental disability was fixed by the Doctor based on the report of the year 2009 and the victim was not examined recently by P.W.2. The petitioner is in custody for the past 1½ years and prayed the sentence to be suspended.

4.On the side of the prosecution, it is stated that the victim was having 60% mental illness. On 19.11.2013, the petitioner entered the house of the victim and committed rape. The occurrence was seen by the sister of the victim. The evidence of P.W.1 to P.W.3 co-relates each other. The evidence of doctor co-relates the evidence of P.W.2 and P.W.3. The statement recorded under Section 164 of Cr.P.C., is supporting the prosecution. The prosecution has examined 23 witnesses and marked 20 documents and five material objects and proved the case beyond all reasonable doubts. The age of the petitioner is 37 years. The offence is serious in nature and prayed the petition to be dismissed.

5.It is seen that the judgment was pronounced on 31.07.2020. The petitioner is in custody for the past 1 ½ years. Considering the above facts and circumstances of the case and considering that there



also considering the fact that the Criminal Revision Case is not likely to be taken up for final hearing in the near future, 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 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, Mahalir Fast Track Court, Theni.

(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 respondent Police daily at 10.30 a.m., until further orders.

sd/-

22/12/2021

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

TO

1 THE SESSIONS JUDGE,
MAHALIR FAST TRACK COURT, THENI.

2 THE INSPECTOR OF POLICE
RAJTHANI POLICE STATION, THENI DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

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

+1 CC to M/s.K.APPADURAI, Advocate (SR-9691[I] dated 23/12/2021)

ORDER

IN

Crl.M.P. (MD) No.10482 of 2021
in

Crl.A. (MD) No.186 of 2021

Date : 22/12/2021

MRN

<https://hmc.vseco.in/CaseDetails.aspx?CaseNo=12.2021/3P/6C>