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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.M.P.No.699 of 2022

in

Crl.A.No.52 of 2022

Ellappa

... Petitioner

Versus

State represented by
Inspector of Police,
All Women Police Station,
Hosur,
Krishnagiri District

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure to suspend the sentence imposed against the petitioner in Spl.S.C.No.34 of 2018 passed by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, Krishnagiri District, dated 29.01.2021 and enlarge the petitioner on bail pending disposal of the above appeal.

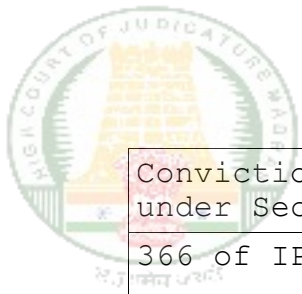
For Petitioner : Mr.M.P.Saravanan

For Respondent : R.Vinoth Kumar,
Govt. Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition is to suspend the sentence imposed on the petitioner by the judgment, dated 29.01.2021 made in Spl.S.C.No.34 of 2018 on the file of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, pending disposal of the above appeal.

2. The trial Court, by a judgment dated 29.01.2021, acquitted A2 and convicted the petitioner/A1 and sentenced him as under:



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Conviction under Section	Sentence
366 of IPC	Rigorous imprisonment for four years and to pay a fine of Rs.10,000/-, in default, to undergo Rigorous imprisonment for six months.
5(1) r/w. 6 of POCSO Act 2012	Rigorous imprisonment for twelve years and to pay a fine of Rs.15,000/-, in default, to undergo Rigorous imprisonment for one year.

The Trial Court ordered the sentences to run concurrently.

3. Challenging the above said conviction and sentence, the present appeal has been filed along with this petition for suspension of sentence.

4. The learned Counsel for the petitioner would submit that even though, the victim has stated before the Court below as if she was pressurised to go along with the accused, a complete reading of her evidence and other evidences coupled with the cross examination of the Investigation Officer would reveal that it is a case of love affair and pursuant to the love affair, the victim, who was studying 10th standard, aged about 15 years at the time of the occurrence, went along with the petitioner/A1. He would further submit that the victim had not stated about any aggravated or penetratory sexual assault in her statement recorded either under Section 164 of the Code of Criminal Procedure or examination before the Court below as P.W.2. Basing only on the medical opinion that her hymen membrane not intact and therefore, there is possibility of sexual intercourse, on presumption and assumption, the Trial Court has convicted the petitioner for the offences under POCSO Act. He would also submit that a reading of the grounds of appeal would demonstrate a prima facie case and therefore, prays suspension of his sentence.

5. Per contra, the learned Government Advocate(crl. side) would submit that it is a clear case that the victim child was pressurised and taken away and there is a medical evidence even if the victim child has not stated about the intercourse. It would clear that she was taken away for total number of four days and kept in a house and the medical evidence demonstrates that she was subjected to aggravated sexual assault and therefore, the Trial Court has rightly convicted the petitioner and opposed the prayer of grant of suspension of sentence.

6. I have considered the rival submissions made on behalf of both sides and went through the material records of the case.



7. Considering the allegations of the case, which is in the nature of a love affair, and considering the fact that the victim has not deposed about any sexual assault before the Court below while examining her as P.W.2 and while recording her 164 Cr.P.C., and considering the age of the victim, being 15 years and the accused, being 24 years, at the time of the occurrence, and the accused is under incarceration from the date of judgment i.e., 29.01.2021, and also considering the various grounds raised in the appeal regarding making out of a prima facie case, I am inclined to suspend the sentence and grant bail to the petitioner on the following conditions:-

(a) the petitioner is ordered to be released on bail, on his executing a bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) with two sureties each for a like sum to the satisfaction of the Trial Court;

(b) the petitioner and the sureties shall affix their photographs and left thumb impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhar Cards or Bank Pass books to ensure their identities;

(c) the petitioner shall appear before the Trial Court on the first working day of every English Calendar Month at 10.30 A.M until the disposal of the Criminal Appeal and if he is not able to appear before the Trial Court on any day, he shall make arrangements to file an application under Section 317 of Cr.P.C., and shall appear before the Trial Court on any other day in lieu of the date of his absence, as directed by the Trial Court.

8. This Criminal Miscellaneous Petition is ordered accordingly.

-sd/-

14/06/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SESSIONS JUDGE,
FAST TRACK MAHILA COURT, KRISHNAGIRI,
KRISHNAGIRI DISTRICT.



2 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
HOSUR, KRISHNAGIRI DISTRICT.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

+1C.C. to M/S M.P.SARAVANAN Advocate on payment of necessary
charges SR.No.9028

Order
in
CRL MP.699/2022
in
CRL.A.52/2022
Date :14/06/2022

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CSK 15/06/2022