



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

Wednesday, the Twenty Ninth day of June Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL MP(MD) No.6851 of 2022
in
Crl.A.(MD)No.368 of 2020

MADURAI VEERAN

... PETITIONER/APPELLANT

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
ANDIPATTI POLICE STATION,
THENI DISTRICT.
CR.NO.315 OF 2018.

... 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 against the petitioner in S.C.No.20/2020 dated 11.02.2022 passed by the Sessions Judge, Mahilar, Neethimandram (Fast Track Maila Court) Theni and enlarge the petitioner on bail pending disposal of the above appeal.

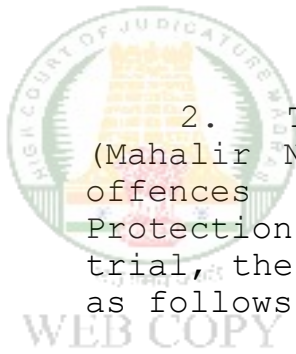
PRAYER IN CRL A(MD)No.368 of 2020:

Pleased to call for the records relating to the Judgment of conviction and sentence made in S.C.No.20 of 2018 dated 11.02.2020 on the file of the Sessions Judge, Mahalir Neethimandram(Fast Track Mahila Court) Theni and set aside the same by allowing the Appeal and acquit the Appellant.

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.G.KARUPPASAMY PANDIYAN, Advocate for the petitioner and of Mr.T.SENTHIL KUMAR, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This petition has been filed to suspend the sentence imposed on the petitioner, by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Theni, in S.C.No.20 of 2018 dated 11.02.2020.

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



2. The petitioner faced a trial before the Sessions Court (Mahalir Neethimandram (Fast Track Mahila Court), Theni, for the offences punishable under Section 366 IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012. After the trial, the trial Court found him guilty, convicted and sentenced him as follows:

i) for the offence under Section 366 IPC, sentenced him to undergo ten years rigorous imprisonment and to pay a fine of Rs.10,000/-, with the default sentence of two years rigorous imprisonment;

ii) for the offence under Section 6 of the POCSO Act, sentenced him to undergo twenty years Rigorous imprisonment and to pay a fine of Rs.10,000/-, with the default sentence of two years rigorous imprisonment.

The sentences of imprisonment were ordered to run concurrently.

3. The learned counsel appearing for the petitioner submits that the trial Court found the petitioner guilty for the offence punishable under Section 6 of POCSO Act and convicted and sentenced him, based on the amendment of POCSO Act, which came into effect only on 16.08.2019, whereas, according to the prosecution, the occurrence had taken place on 21.04.2018. Therefore, the conviction and sentence imposed on the petitioner for the offence under Section 6 of POCSO Act cannot be sustained. He further submits that the framing of charges for the offence under Section 6 of POCSO Act is not correct, when the age of the victim is admittedly 15 years. Moreover, in this case, all the witnesses including the victim turned hostile. However, the trial Court, based on the 164 statement of the victim girl, found the petitioner guilty, convicted and sentenced him as stated above.

4. The learned Additional Public Prosecutor opposed for suspending the sentence, stating that this is the second petition filed by the petitioner for suspending the sentence. The earlier petition filed by the petitioner was dismissed by this Court on 06.04.2022. Regarding the hostile witnesses, the learned Additional Public Prosecutor submits that the victim girl has deposed before the trial Court when 164 statement was recorded and also stated in the chief examination, when she was examined on 14.02.2019. However, the accused failed to cross examine the witnesses on that day and took time to win over the witnesses and cross examined the witnesses only on 23.09.2019, i.e. after the period of seven months. Therefore, the trial Court considered the statement of the victim girl. The victim girl cannot be treated in toto as a hostile witness. The learned Additional Public Prosecutor further submits that the penetration has been sufficiently proved by the prosecution. Therefore, the conviction and sentence imposed by the trial Court cannot be found fault with.



5. This Court considered the rival submissions made.

6. This is the second petition filed for suspension of sentence. The earlier petition filed by the petitioner in Crl.M.P. (MD)No.7199 of 2020 was dismissed by this Court on 06.04.2022, based on the representation made by the learned counsel appearing for the petitioner/accused that he returned the papers to the party, for which, he has also made an endorsement and since there was no appearance for the petitioner. The learned counsel for the petitioner attacked the conviction and sentence stating that when the occurrence had taken place on 21.04.2018, the conviction and sentence imposed for the offence under Section 6 of POCSO Act, was made on the amended Act, which came into effect only on 16.08.2019; the conviction was also imposed on the petitioner based on the 164 statement, when the age of the victim girl is admittedly 15 years. In this case, all the witnesses, including the victim girl, turned hostile. According to the prosecution, the witnesses were cross examined by the accused after seven months from the date of chief examination in order to win over the witnesses. However, a question as to whether the witnesses were win over or not, can be decided only at the time of final disposal of the appeal. The petitioner was in jail for a period of three months during the trial. After the trial, he is in jail from 11.02.2020, approximately, for a period of more than 25 months.

7. Considering the period of incarceration and the grounds raised by the learned counsel for the petitioner, this Court is inclined to suspend the sentence imposed on the petitioner.

8. Accordingly, the substantive sentence of imprisonment alone is suspended pending disposal of the criminal appeal and the petitioner is ordered to be enlarged on bail on executing a bond for Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Theni, and on further condition that the petitioner shall appear before the said Court on the first working day of every English Calender month at 10.30 a.m., till the disposal of the appeal.

sd/-
29/06/2022

/ TRUE COPY /

30/06/2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

1 THE SESSIONS JUDGE,
MAHALIR NEETHIMANDRAM (FAST TRACK MAHILA COURT),
THENI.

2 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
ANDIPATTI POLICE STATION,
THENI DISTRICT.

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

+1 CC to M/s.G.KARUPPASAMY PANDIAN, Advocate (SR-6311[I] dated
29/06/2022)

ORDER

IN

CRL MP(MD) No.6851 of 2022
in

CrI.A.(MD)No.368 of 2020

Date :29/06/2022

OGY

USK/PN/SAR-IV/30.06.2022/4P/6C