



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

Friday, the Twenty Fourth day of June Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr.Justice **K.MURALI SHANKAR**

CRL MP(MD) No.6070 of 2022

IN

CRL A(MD) No.240 of 2022

ARUMUGAM

... PETITIONER/APPELLATE

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE,
KADAYAM POLICE STATION,
TIRUNELVELI DISTRICT.

... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to enlarge him on bail by suspending the sentence imposed on the petitioner by the Mahila Court, Tirunelveli in SC no.676 of 2017 dt.03/03/2022, pending disposal of the above Criminal Appeal.

PRAYER IN CRL A(MD)NO.240 OF 2022:

Pleased to call for records and set aside the Judgment made in S.C.No.676 of 2017 by the Mahila Court, Tirunelveli dated 03.03.2022.

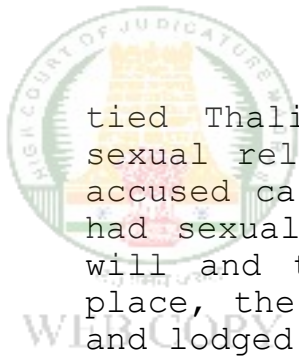
Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.VENKATESH.D, Advocate for the petitioner and of M/S.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

RESERVED ON: 13.06.2022

PRONOUNCED ON: 24.06.2022

The above petition has been filed seeking orders to suspend the sentence imposed on the petitioner/accused in S.C.No.676 of 2017, on the file of the Mahila Court, Tirunelveli, dated 03.03.2022 and enlarge him on bail till the disposal of the appeal.

2. The case of the prosecution is that the victim girl got acquaintance with the first accused through wrong call and they have been made conversation often over phone, that during phone talk, the first accused informed her that he would marry, that since the first accused asked to come to Mettur Bus stop, she went to that place on 12.03.2014 morning, that he had taken the victim girl to Tirunelveli and to his native village Alwarneri, where he tried to have sexual relationship, but she refused, that thereafter he had taken her to C.N.Grarmam and both of them stayed in a house and at that time, he



tied Thali pretending that he married her and consequently had sexual relationship with her few times, that thereafter, the first accused called the petitioner/appellant and the second accused also had sexual relationship with the victim girl forcibly against her will and that thereafter, when both the accused went out of the place, the victim girl escaped from there and returned to her place and lodged the complaint.

3. Originally, on the complaint lodged by the father of the victim girl as she was found missing, F.I.R. came to be registered in Cr.No.79 of 2014 as "Girl Missing" and after returning of the victim girl and based on the statement given by her, the case was altered to for the offence under Sections 366 and 376 I.P.C. After completing the investigation, a charge sheet has been filed and the same was taken on file in P.R.C.No.41 of 2015 and since the first accused was absconding, the case was ordered to be split up in P.R.C.No.62 of 2017 in respect of the first accused.

4. During trial, 17 witnesses have been examined and P.W.1 to P.W.17 and 22 documents have been exhibited as Exs.P.1 to P.22 and 6 material objects were marked as M.O.1 to M.O.6. The petitioner/appellant has adduced neither oral nor documentary evidence. The learned Sessions Judge, Mahila Court, Tirunelveli, upon considering the evidences adduced and on hearing the arguments of both sides, has passed the impugned judgment dated 03.03.2022 convicting the accused for the offence under Section 376(i) I.P.C., and sentenced him to undergo 10 years Rigorous Imprisonment along with a fine of Rs.50,000/-, in default to undergo 1 year Simple Imprisonment.

5. Challenging the judgment of conviction and sentence imposed on him, the second accused has preferred the above Criminal Appeal along with the application for suspension of sentence and that the same was ordered to be dismissed as withdrawn, vide order dated 20.04.2022. The appellant has filed the above application for suspension of sentence again.

6. The learned Counsel for the petitioner would submit that the entire reading of the evidence given by the prosecutrix as P.W.2 and the Medical Officer examined as P.W.15 would clearly show that the evidence of rape would not get attracted against the petitioner, that the prosecution has purposely suppressed the statement recorded under Section 164 Cr.P.C., given by the prosecutrix and that the prosecution has miserably failed to prove the charges against the petitioner.

7. The respondent has filed a counter affidavit disputing the charges and raised serious objections to suspend the sentence.

8. The learned Additional Public Prosecutor appearing for the State would submit that the evidence of P.W.1 to P.W.4 as well as



the medical evidence clearly proves the charges against the petitioner and that the trial Court has rightly convicted the accused for the offence under Section 376 I.P.C., and that the trial Court has specifically held that there will not be any reason to discard the testimony of the prosecutrix and other evidences corroborating the evidence of P.W.2

9. The learned Additional Public Prosecutor appearing for the State would further submit that the Medical Officer, who examined the prosecutrix has noticed injury on her private part. He would further submit that the trial Court has given a specific finding that the prosecutrix has raised serious protest while the petitioner was having sexual relationship with her. Moreover, the judgment of conviction was passed on 03.03.2022 and the petitioner is in incarceration for the past 3 months only.

10. Considering the above facts and circumstances and also the seriousness and gravity of the offences alleged and also taking note of the incarceration period, this Court is not inclined to suspend the sentence at this point of time.

11. In the result, the Criminal Miscellaneous Petition is dismissed.

sd/-
24/06/2022

/ TRUE COPY /

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

TO

- 1.THE JUDGE, MAHILA COURT, TIRUNELVELI.
- 2.THE INSPECTOR OF POLICE,
KADAYAM POLICE STATION,TIRUNELVELI DISTRICT.
- 3.THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.
- 4.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.6070 of 2022
IN
CRL A(MD) No.240 of 2022
Date :24/06/2022