



WEB COPY

CRL MP(MD)



22

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

Thursday, the Seventh day of July Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr.Justice **P.N.PRAKASH**
and

The Hon`ble Mrs.Justice **R.HEMALATHA**
CRL MP(MD) No.7209 of 2022

IN
CRL A(MD) No.527 of 2021

KUMARESHAN

(NOW CONFINED AT CENTRAL PRISON,
TRICHY)

... PETITIONER/APPELLANT/ACCUSED

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
PUDUKKOTTAI,
PUDUKKOTTAI DISTRICT.
CRIME NO.1 OF 2018.

... 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 sentence imposed on the Petitioner by the learned Sessions Judge(In-Charge)Mahila Court,Pudukkottai in Spl.SC.No.10 of 2018 dt.26.10.2021 and enlarge the Petitioner on bail pending disposal of the above Criminal Appeal.

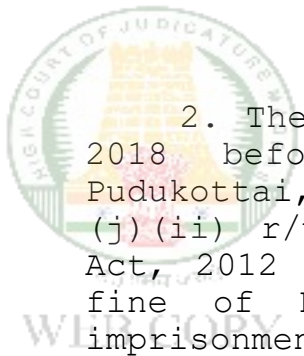
PRAYER IN CRL A(MD)NO. 527 OF 2021:

To call for the records of the case in Spl.S.C.NO. 10 of 2018 on the file of the learned Sessions Judge (in-charge) Mahila Court, Pudukkottai dated 26/10/2021 and set aside the conviction and sentence and acquit the Appellant/Accused.

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.S.KARTHIKEYAN, Advocate for the petitioner and of M/S.A.THIRUVADI KUMAR, Additional Public Prosecutor on behalf of the Respondent,the court made the following order:-

(Order of the Court was made by *P.N.PRAKASH,J.*)

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment and order dated 26.10.2021 passed in Special S.C.No.10 of 2018 before the Sessions Judge (In-Charge), Mahila Court, Pudukottai and to enlarge the petitioner on bail, pending disposal of the above appeal.



2. The petitioner, who was the accused in Special S.C. of 2018 before the Sessions Judge (In-Charge), Mahila Court, Pudukottai, was convicted of the offences under Section 5(1) and 5(j)(ii) r/w 6 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo life imprisonment and to pay a fine of Rs.50,000/-, in default to undergo one year simple imprisonment.

3. Challenging the aforesaid conviction and sentence, the petitioner has filed Crl.A. (MD) No.527 of 2021 along with the instant criminal miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.S.Karthikeyan, learned counsel for the petitioner and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the respondent/State.

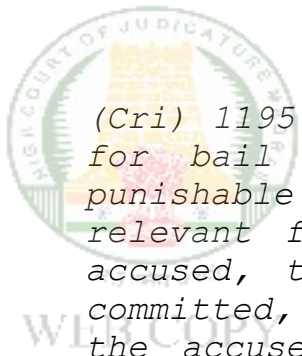
5. Today, Ms.G.Tamilselvi, (WPC 439), Pudukottai AWPS, is present before this Court.

6. When the matter came up for hearing, learned counsel for the petitioner submitted that the petitioner is willing to marry the victim girl. Therefore, by order dated 28.06.2022, we directed the victim girl to be produced before us. Today, the victim girl appeared before us and when we enquired her, she stated that she is not willing to marry the petitioner as he had repudiated the paternity of the child and had vilified her by saying she had conceived by going astray. Therefore, the victim girl 'X' cannot be forced to marry the petitioner. She further stated that the appellant's gesture to marry her is not genuine and only to escape from the case he is saying so. If he had been genuine, he would have married her earlier.

7. Now, coming to the facts, the petitioner promised to marry 'X' a minor girl and sexually abused her, on account of which, she became pregnant and delivered a child. Thereafter, he repudiated the paternity of the child albeit the fact that the DNA report clinchingly disclosed that the petitioner had fathered the child.

8. Be it noted, suspension of sentence and bail is not automatic in the light of the judgment of the Supreme Court in **Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi)**¹, wherein, it was held as follows:

"30. . . . In the above cases, it has been observed that once a person has been convicted, normally, an appellate court will proceed on the basis that such person is guilty. It is no doubt true that even thereafter, it is open to the appellate court to suspend the sentence in a given case by recording reasons. But it is well settled, as observed in Vijay Kumar [(2002) 9 SCC 364 : 2003 SCC



(Cri) 1195 : JT 2002 Supp (1) SC 60] that in considering the plea for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should consider all the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted."

9. In view of the above reasoning and also taking into consideration the facts and circumstances of this case, we are of the opinion that this is not a fit case to grant suspension of sentence and bail to the petitioner and accordingly, this criminal miscellaneous petition stands dismissed.

sd/-
07/07/2022

/ TRUE COPY /

/07/2022

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

- 1 THE SESSIONS JUDGE (INCHARGE)
MAHILA COURT, PUDUKKOTTAI.
- 2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, PUDUKKOTTAI,
PUDUKKOTTAI DISTRICT.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON,
TRICHY.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.7209 of 2022
IN
CRL A(MD) No.527 of 2021
Date :07/07/2022

RK/SVR/SAR-III/13.07.2022 : 3P/5C