

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

RESERVED ON	27.07.2022
PRONOUNCED ON	29.07.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.8443 of 2022

IN

CRL A(MD) No.277 of 2021

M.NACHIMUTHU

... PETITIONER/APPELLANT/SOLE ACCUSED

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
CUMBUM SOUTH POLICE STATION,
THENI DISTRICT.
CR.NO.188/2019

... 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, (Mahalir Fast Track Court), Theni by judgment in Spl.S.C.No.47 of 2019 dated 22.04.2021 and enlarge him on bail pending disposal of the Criminal Appeal.

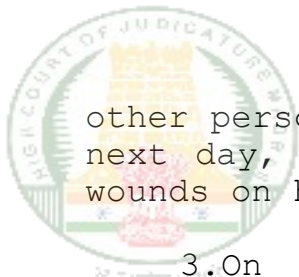
Prayer in CRL A(MD)No.277 of 2021 :

To take this appeal on file and call for the entire records in connection with judgment of the learned Fast Track Mahila Court, Theni dated 22.04.2021 in Spl.S.C.47 of 2019 and setaside the conviction and sentence imposed on 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.JEGADEESH PANDIAN.M, Advocate for the petitioner and of MR.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed in Spl.S.C.No.47 of 2019, dated 22.04.2021, on the file of the learned Sessions Judge, Mahalir Fast Track Court, Theni, till the disposal of this Criminal Appeal.

2.The case of the prosecution is that on 01.05.2019, the victim girl was playing outside near a village temple, when the defacto complainant was held up in work at her home, that the petitioner, who is her neighbour, had taken the victim girl and forcefully kissed on her lips as well as bit her and tried to molest her, that when the victim girl raised ruckus, the petitioner threatened her with his life and warned her against revealing this incident to any



other person and that the victim girl went back home and on the next day, when the defacto complainant took her for bath, she saw wounds on her breast area.

3. On the basis of the complaint lodged by the defacto complainant, FIR came to be registered in Crime No.188 of 2019 dated 02.05.2019.

4. The respondent police, after completing the investigation, has laid a final report for the offences under Section 506(1) IPC and Section 10 of Protection of Children from Sexual Offences Act and the case was taken on file in Spl.S.C.No.47 of 2019 on the file of the Mahalir Fast Track Court, Theni.

5. During the trial, the prosecution has examined 9 witnesses as P.W.1 to P.W.9 and exhibited 8 documents as Ex.P.1 to Ex.P.8, whereas, the accused has adduced neither oral nor documentary evidence.

6. The learned Sessions Judge, upon considering the evidences adduced and on hearing the arguments on both the sides, has passed the impugned judgment dated 22.04.2021 convicting the petitioner/sole accused for the offence under Section 506(1) IPC and sentenced him to undergo six months rigorous imprisonment and convicting the petitioner/sole accused for the offence under Section 10 of Protection of Children from Sexual Offences Act and sentenced him to undergo five years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one month simple imprisonment. Aggrieved by the said judgment of conviction and sentence, the petitioner preferred the present appeal along with the above miscellaneous petition for suspension of sentence.

7. No doubt, the earlier applications for suspension of sentence filed by the petitioner in Crl.M.P.(MD)Nos.4571 of 2021 and 871 of 2022 were dismissed by this Court vide orders dated 11.08.2021 and 24.01.2022.

8. The learned counsel for the petitioner would submit that there is no corroboration between the evidence of prosecution witnesses. He would further submit that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses.

9. The learned Additional Public Prosecutor appearing for the respondent would submit that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.



10. This Court has carefully considered the rival contentions put forward by either side and also perused the materials available on record.

11. The learned counsel for the petitioner pointed out that certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. The fact remains that there are arguable points involved in this criminal appeal and further the criminal appeal is not likely to be taken up for final hearing in the near future and the petitioner is in incarceration from 22.04.2021 and as such, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

12. Accordingly, the relief of suspension of sentence and bail is granted to the petitioner on the following conditions:-

(i) The petitioner shall execute 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 learned Sessions Judge, Mahalir Fast Track Court, Theni;

(ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity; and

(iii) The petitioner shall appear before the trial Court on all working days at 10.30 a.m., until further orders 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.

sd/-

29/07/2022

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29/07/2022

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

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



TO

- 1 THE SESSIONS JUDGE, MAHALIR FAST TRACK COURT, THENI.
- 2 THE INSPECTOR OF POLICE, CUMBUM SOUTH POLICE STATION,
THENI DISTRICT.
- 3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL MP(MD) No.8443 of 2022

IN

CRL A(MD) No.277 of 2021

Date :29/07/2022

RS/VR/SAR.3 (29.07.2022) 4P-5C