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CRL MP(MD)



22

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

Tuesday, the Thirtieth day of August Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.8999 of 2022

IN

CRL A(MD) No.478 of 2022

PACKIYARAJ

... PETITIONER/APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
PARAMAKUDI,
RAMANATHAPURAM DISTRICT.
(CRIME NO.19 OF 2020)

... 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 on the petitioner by the learned Sessions Judge (Fast Track Mahila Court), Ramanathapuram in Spl.S.C.No.24 of 2021, Dated 27.09.2021 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

Prayer in CRL A(MD)No.478 of 2022 :

To allow this appeal by setting aside the judgment and conviction imposed by Sessions Judge (Fast Track Mahila Court), Ramanathapuram made in Spl.S.C.No.24 of 2021 dated 27.09.2021 and may be pleased to acquit to Appellant/Sole Accused on the charges leveled against the petitioner.

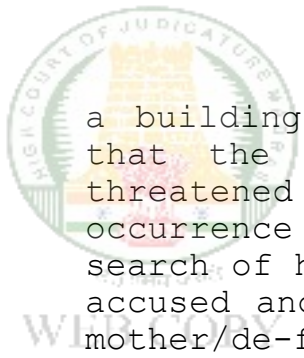
Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.A.VADIVEL, Advocate for the petitioner and of MR.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent, while admitting the Criminal Appeal,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

RESERVED ON	29.08.2022
PRONOUNCED ON	30.08.2022

This petition has been filed to suspend the sentence passed in Spl.S.C.No.24 of 2021, dated 27.09.2021 on the file of the learned Sessions Judge, (Fast Track Mahila Court), Ramanathapuram, till the disposal of this Criminal Appeal.

2.The case of the prosecution is that on 14.10.2020, at about 03.30 hours, when the victim's father went to duty and the victim was playing in front of the church building, that the accused, who is the neighbor came to that place and forcibly taken the victim to

<https://www.mhc.gov.in/dis>



a building and the petitioner rubbed her chest and private parts, that the accused had kissed the victim girl by coercion and threatened that he would kill her mother, if she discloses the occurrence and that at that time, P.W.2 and P.W.3 came there in search of her son and on seeing the occurrence, they had scolded the accused and taken the victim and informed the same to the victim's mother/de-facto complainant.

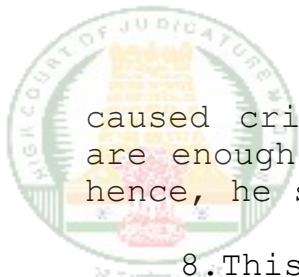
3. On the basis of the complaint lodged by the victim's mother, FIR came to be registered in Crime No.19 of 2020 for the offences under Sections 9(m), 9(r) and 10 of POCSO Act. The respondent, after completing the investigation, has laid the final report on 23.10.2021 and the case was taken on file in Spl.S.C.No.24 of 2021 before the learned Sessions Judge, (Fast Track Mahila Court), Ramanathapuram.

4. During the trial, the prosecution has examined 7 witnesses as P.W.1 to P.W.7 and exhibited 10 documents as Ex.P1 to Ex.P10. The defence has adduced neither oral nor documentary evidence.

5. The learned Sessions Judge, upon considering the evidence and on hearing the arguments of both sides, has passed the impugned Judgment, dated 27.09.2021 and convicted the petitioner/accused for the offence under Section 366 IPC and sentenced him to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo one year Simple Imprisonment, for the offence under Section 9(m) r/w 10 of POCSO Act and sentenced him to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo one year Simple Imprisonment and for the offence under Section 9(r) r/w 10 of POCSO Act and sentenced him to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo one year Simple Imprisonment. Aggrieved by the said Judgment of conviction and sentence, the petitioner/accused has preferred the present appeal along with the above Miscellaneous Petition seeking suspension of sentence.

6. The learned counsel for the petitioner would submit that the petitioner is aged more than 50 years, that he was not at all involved in the occurrence and that due to the previous enmity between the family of the accused and the de-facto complainant, he was falsely implicated in the above case. 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. He would further submit that the petitioner has been in incarceration from the date of judgment i.e., 27.09.2021 onwards.

7. The learned Additional Public Prosecutor would submit that the victim was aged 8 years at the time of alleged occurrence, that the petitioner had forcibly taken the victim girl to the building, where he had committed sexual assault on the victim girl and also



caused criminal intimidation. He would further submit that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

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

9. 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 as such, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

10. Accordingly, the relief of suspension of sentence 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 (Fast Track Mahila Court), Ramanathapuram.

(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 concerned 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/-

30/08/2022

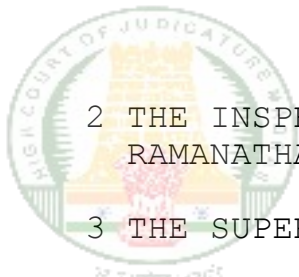
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01/09/2022

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

TO

1 THE SESSIONS JUDGE (FAST TRACK MAHILA COURT),
RAMANATHAPURAM DISTRICT.



2 THE INSPECTOR OF POLICE, ALL WOMEN POLICE STATION, PARAMAI
RAMANATHAPURAM DISTRICT.

3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

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

+1 CC to M/s.P.SARAVANAN, Advocate (SR-9335[I] dated 30/08/2022)

ORDER

IN

CRL MP(MD) No.8999 of 2022

IN

CRL A(MD) No.478 of 2022

Date :30/08/2022

sj i

RS/PN/SAR.1 (01.09.2022) 4P-6C