



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

Monday, the Thirty First day of October Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.8693 of 2022
IN
CRL A(MD) No.465 of 2022

ANDISAMY

... PETITIONER/APELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
VADAMADURAI,
DINDIGUL 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 suspend the sentence imposed against the petitioner in Spl.S.C.No.19 of 2019 dt 24/06/2022 passed by the Learned Fast Track Mahila Judge, Dindigul and enlarge petitioner on bail pending disposal of the above appeal.

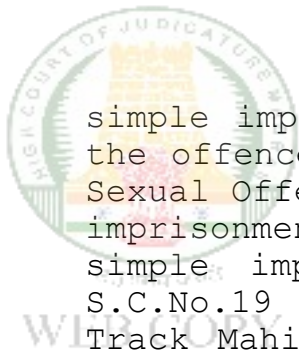
Prayer in CRL A(MD).465 of 2022 :

To call for the records in Spl.S.C.No.19 of 2019 dated 24.06.2022 passed by the Learned Fast Track Mahila Judge, Dindigul and to set aside the judgment.

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.KARUPPASAMY PANDIYAN.G, Advocate for the petitioner and of MR.RMS.SETHURAMAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the learned Sessions Judge, Fast Track Mahila Court, Dindigul, dated 24.06.2022, in Special S.C.No.19 of 2019 and enlarge the petitioner on bail, pending disposal of the above said Criminal Appeal.

2.The learned counsel for the petitioner submitted that the petitioner, who is the accused No.1 in this case, has been found guilty and convicted by the learned Sessions judge, for the offence under Section 363 of IPC and sentenced to undergo 3 years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo



simple imprisonment for a period of three months and conviction for the offence under Section 5(1) r/w 6 of Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for a period of three months, in Special S.C.No.19 of 2019 on the file of the learned Sessions Judge, Fast Track Mahila Court, Dindigul. The imprisonment was ordered to run concurrently. Set off under Section 428 Cr.P.C. was also ordered.

3.The case of the prosecution in brief:

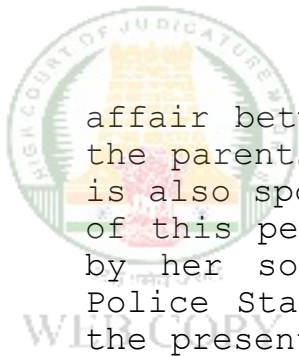
On 10.12.2018, the victim girl was alone in the house and at that time, the first accused came to the house and told her that he want to marry. At that time A2 and A4 also came there. They supported the first accused. All of them brought the victim girl to the house of the fourth accused. During the night hours, the first accused had sexual relationship with her. Thereafter, she was taken to Coimbatore and there both of them stayed for more than eight days and at that time she was subjected to sexual assault for several times. Later she was taken to the Dindigul Bus stand. She informed the same to her mother. Later the first accused refused to marry her. On the basis of the above said occurrence, complaint was given and after completing the formalities of the investigation final report was filed before the concerned Special Court. On the side of the prosecution 14 witnesses have been examined, 11 documents were marked.

4.At the conclusion of the trial, the trial Court came to the finding that the charges that were framed against the accused person were proved beyond the reasonable doubt. On that basis, the first accused was found guilty and convicted and sentenced above. The other accused persons were acquitted. Challenging the above said conviction and sentence, appeal has been preferred by the petitioner. Pending appeal, this petition has been filed seeking suspension of sentence.

5.The learned counsel for the petitioner submitted that at the time of occurrence, the age of the victim girl is 17+ and there is love affair between the first accused and the victim girl. They were living together for more than 9 days and the date of birth of the victim girl was not properly established by the prosecution before the trial Court.

6.Per contra, the learned Additional Public Prosecutor would submit that now the victim is aged about 17+ and there was no love affair between them and she was made sexual assault repeatedly.

7.P.W1. is the mother of the victim girl. She has stated that the victim was taken by the petitioner promising to marry her, but later refused. They also made demand through Panchayat, again this petitioner refused. On that basis, the complaint was given. During



affair between them for more than a year. That was not objectionable by the parents also. So what happened after the above said love affair is also spoken by the P.W.1. There was an allegation that the sister of this petitioner namely Andiammal was subjected to sexual torture by her son. Over which a case was registered before Sanarpatti Police Station. Only after the above said complaint and occurrence the present complaint was given. So it appears that after the above said issue only, the problem has arisen. The victim girl has stated that she voluntarily left the house and stayed with the petitioner for more than 9 days in Coimbatore.

8.The learned counsel for the petitioner submitted that it is a consensual stay. But it is not established that she attained majority on the date of alleged occurrence. So the consent may not be taken into account.

9.At the conclusion of the hearing, the learned counsel for the petitioner submitted that after the occurrence, the victim girl was married to some other boy and living happily. But it appears that after the above said love affair, due to some dispute between the brother of the victim girl and the accused family, the complaint has been given.

10.Considering the above said circumstances, I am of the considered view that this petitioner is entitled for suspension of sustenance.

11.Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail, on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only), with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Fast Track Mahila Court, Dindigul and on further condition that the petitioner shall appear before the said Court at once in a week at 10.30 a.m, pending disposal of the appeal.

sd/-

31/10/2022

/ TRUE COPY /

01/11/2022

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

TO

1 THE SESSIONS JUDGE, FAST TRACK MAHILA COURT, DINDIGUL.

2 THE INSPECTOR OF POLICE, ALL WOMEN POLICE STATION, VADAMADURAI,
DINDIGUL DISTRICT.

3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.



CRL MP(MD)



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

+1 CC to M/s.G.KARUPPASAMY PANDIYAN, Advocate (SR-12137[I] dated
31/10/2022)

WEB COPY

ORDER

IN

CRL MP(MD) No.8693 of 2022

IN

CRL A(MD) No.465 of 2022

Date :31/10/2022

TM

RS/SBN/SAR.(01.11.2022) 4P-6C