



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

Friday, the Twenty Sixth day of August Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

Crl.M.P(MD)No.8891 of 2022
in
Crl.A.(MD)No.396 of 2021

MURUGAN

... APPELLANT / SOLE ACCUSED

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
DINDIGUL, DINDIGUL DISTRICT.
CRIME NO.13/2018

... 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 against me and release the petitioner on bail pending disposal of the main Criminal Appeal before this Honourable Court against the judgment of the Honourable Sessions Judge Fast Track Mahila Court Dindigul in Special S.C.No.49 of 2018 dated 05.05.2021

Prayer in Crl.A.(MD)No.396 of 2021:

To call for the entire records connected with the judgment rendered by the Hon`ble Sessions Judge, Fast Track Mahila Court, Dindigul in special S.C.No.49 of 2018 dated 05.05.2021 and set aside the same and consequently acquit 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. PRAKASH.R, Advocate for the petitioner and of on behalf of the Respondents the court made the following order:-

RESERVED ON	25.08.2022
PRONOUNCED ON	26.08.2022

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed in Spl.S.C.No.49 of 2018, dated 05.05.2021, on the file of the learned Sessions Judge, Fast Track Mahila Court, Dindigul, till the disposal of this Criminal Appeal.



2. The case of the prosecution is that on 02.09.2018 at 05.30 p.m., when the victim girl went to the groceries shop and while she was returning to her house by crossing the railway gate, the petitioner/accused called the victim girl, then he forcibly pulled the victim girl into his hut, that the petitioner had then committed aggravated penetrative sexual assault against the victim girl, that the petitioner threatened the victim girl that he will done away her father and brother if she discloses the occurrence to anyone and that again on 03.09.2018 at about 05.30 p.m., when the victim girl was returning to her house from her school, the petitioner pulled her to his hut and committed aggravated penetrative sexual assault.

3. The respondent police registered a case in Crime No.13 of 2018 for the offences under Sections 5(1)(m) r/w 6 of POCSO Act. After completing the investigation, the respondent has filed charge sheet against the petitioner/accused for the offences under Sections 5(1)(m) r/w 6 of POCSO Act.

4. During the trial, the prosecution has examined 18 witnesses as P.W.1 to P.W.18 and exhibited 11 documents as Ex.P.1 to Ex.P.11. The defence has adduced neither oral nor documentary evidence.

5. The learned Sessions Judge, upon considering the evidence adduced and on hearing the arguments of both the sides, has passed the impugned judgment dated 05.05.2021 convicting the petitioner/sole accused for the offence under Sections 5(1)(m) r/w 6 of Protection of Children from Sexual Offences Act, 2012, and sentenced him to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months Simple Imprisonment and for the offence under Section 506(1) IPC, sentenced him to undergo one year Rigorous Imprisonment and that the above sentences were ordered to be run concurrently. Aggrieved by the said judgment of conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above miscellaneous petition for suspension of sentence.

6. No doubt, the petitioner's earlier two applications seeking suspension of sentence were dismissed by this Court vide orders dated 09.12.2021 and 11.04.2022.

7. The learned counsel for the petitioner would submit that the evidence adduced by the prosecution is not at all sufficient to prove the prosecution case, that Ex.P.2-complaint is not a genuine one and the same was fabricated, that the real complaint was suppressed, that the witnesses P.W.5 and P.W.6 have turned hostile and P.W.2, P.W.3 and P.W.7 to P.W.11 were only hearsay witnesses, that the medical evidence did not support the case of the prosecution and that the trial Court, without considering the above



8. The learned counsel for the petitioner would further submit that P.W.1 in her evidence has stated that the alleged occurrence happened in the presence of gate keeper, but the prosecution has failed to examine the said gate keeper, who is co-worker of the petitioner, that the alleged incident was occurred on 02.09.2018 and 03.09.2018, but FIR came to be registered only on 09.09.2018, that the prosecution has miserably failed to explain the inordinate delay in lodging the FIR, that the trial Court has failed to consider that all the witnesses are close relatives of the defacto complainant and they are interested witnesses and that the prosecution has not chosen to examine any independent witnesses to prove their case.

9. The learned Additional Public Prosecutor would submit that the trial Court has rightly held that the date of birth of the victim girl is 03.10.2006 as per her school certificates and she was below 12 years at the time of alleged occurrence and that the prosecution has proved that the petitioner had committed aggravated penetrative sexual assault two times on two dates and also threatened the victim girl and caused criminal intimidation. He would further submit that the trial Court, after considering the evidences of P.W.1 to P.W.4, P.W.7 to P.W.18, Ex.P.1 and Ex.P.11, has specifically recorded that the charges levelled against the petitioner stood proved and that the evidence of the victim girl is reliable and trustworthy and the same was corroborated by P.W.2 to P.W.4 and medical records.

10. It is pertinent to note that the victim girl was aged 11 years at the time of alleged occurrence, but the petitioner is aged 53 years.

11. Considering the above facts and circumstances and taking note of the seriousness and gravity of the offence alleged and also the fact that the petitioner is in incarceration from the date of judgment i.e., 05.05.2021, this Court is not inclined to suspend the sentence imposed on the petitioner.

12. In the result, this Criminal Miscellaneous Petition is dismissed.

sd/-

26/08/2022

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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, DINDIGUL, DINDIGUL DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

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

ORDER

IN

Crl.M.P(MD)No.8891 of 2022
in

Crl.A.(MD)No.396 of 2021

Date :26/08/2022

MK/VR/SAR.IV/30.08.2022/4P/5C