

CRL.M.P. (MD)No.10709 of 2022
in
CRL.A. (MD)No.549 of 2022

G.ILANGOVAN, J.

This Criminal Miscellaneous Petition is filed to suspend the conviction and sentence imposed against the petitioner in Spl.S.C.No.24 of 2020, dated 07/04/2022 by the Mahila Court, Pudukkottai and enlarge the petitioner on bail pending disposal of the criminal appeal.

2.The case of the prosecution is that the victim girl was born, on 25/09/2002 and she was studying Tourism subject in KKC College. The accused person namely S.Vijay residing in the ground floor of house, enticed and on the false of marriage, he kidnapped the victim girl, on 02/07/2020 to various places and stayed in Chennai, where he was working for about several days. Upon the complaint given by the de-facto complainant, who is the father of the victim girl, the case was registered and charges were framed against him for the offences under section 363 IPC and section 12 of Prevention of Child from Sexual offences Act, 2019. On the side of the prosecution, 8 witnesses were examined and 10 documents were marked. One MO was also marked.

3.At the conclusion of the trial, the trial court found the petitioner guilty and sentenced him to undergo 7 years R/I and imposed a fine of Rs.2,000/- with default clause for the offence under section 363 IPC; and 3 years R/I and imposed a fine of Rs.10,000/- with default clause for the offence under section 12 of Protection of Children from Sexual Offences Act, 2019. Challenging the above said conviction and sentence, criminal appeal has been preferred before this court.

4.Pending appeal, this miscellaneous petition has been filed by the petitioner on the ground that the victim girl was in love with the petitioner and on her own accord, she left the parental home along with this petitioner, since she was not liking the marriage proposal that was made by the parents. She was matured enough to decide her life. So according to the learned counsel appearing for the petitioner, the ingredient of section 363 IPC is not attracted; the ingredient of offence under section 12 of the Prevention of Children from Sexual Offences Act, 2019, according to him, since the victim girl voluntarily left the parental home along with the petitioner, that cannot be construed as taking the minor girl out of the lawful guardianship. This is the prime contention at the argument of the learned counsel appearing for the petitioner.

5. But the learned Government Advocate (Criminal side) would submit that during the course of investigation, the victim girl has given a clear indication to the effect that even though, there was no love with petitioner, she was taken by the petitioner, on 02/07/2022 and stayed for about 4 days. Now the victim girl has married to some other boy and she has also pregnant because of the above said marriage.

6. Whether in the facts and circumstances of the case, the offence under section 363 IPC will be attracted is a matter for consideration in the main appeal. Though there is a finding by the trial court in the positive manner, the judgment was delivered only on 07/04/2022.

7. Considering the duration of the custody of the petitioner and also considering the fact that it will take time to hear the main appeal for disposal, I am inclined to enlarge the petitioner on bail, by suspending the substantive part of sentence. Accordingly, the suspension of sentence petition is **allowed** and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal on the following conditions:-

(i) 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 Mahila Court, PUdukkottai; and

(ii)on further condition that the petitioner shall appear before the said Court daily at once in a week i.e., on the first working day of every week at 10.30 am pending appeal.

15.09.2022

Index : Yes/No
Internet : Yes/No
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Copy to:-

The Central Prison, Trichy.

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