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CRL MP(MD)



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

Tuesday, the Thirteenth day of September Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.9426 of 2022

in

CRL A(MD) No.332 of 2021

MANIKANDAN

... PETITIONER/APPELLANT/SOLE ACCUSED

Vs

STATE REP.BY

THE INSPECTOR OF POLICE,
ALL WOMAN POLICE STATION,
JEEYAPURAM, TRICHY.
CRIME NO.7 OF 2017

... 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 by the learned Special Judge (Mahila Court), Tiruchirapalli in Special S.C.No.10 of 2019, Dated 01.04.2021 and enlarge the petitioner on bail, pending disposal of the Criminal Appeal.

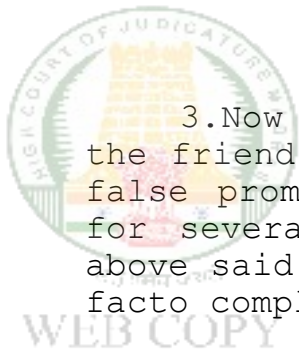
Prayer in CRL A(MD)No.332 of 2021 :

To call for the records and set aside the judgment and conviction imposed by the learned Sessions Judge, Mahila Court, Tiruchirappalli made in Spl.S.C.No.10 of 2019 dated 10.04.2021 and allow the above criminal appeal.

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.SOMASUNDRAM.E, Advocate for the petitioner and of MR.S.MANIKANDAN, Government Advocate (Crl.Side) on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the conviction and sentence imposed against the petitioner in Spl.S.C.No.10 of 2019, dated 01/04/2021 by the Special Mahila Court, Trichy and enlarge the petitioner on bail pending disposal of the criminal appeal.

2.The petitioner was facing the charges for the offences under sections 5(j)(ii) r/w 6 of Protection of Children from Sexual Offences Act, 2012 and he was found guilty and convicted and sentenced to undergo 10 years R/I and imposed a fine of Rs.2,000/- with default clause. Challenging the above said sentence, criminal appeal has been preferred before this court. Pending appeal, this miscellaneous petition has been filed by the petitioner.



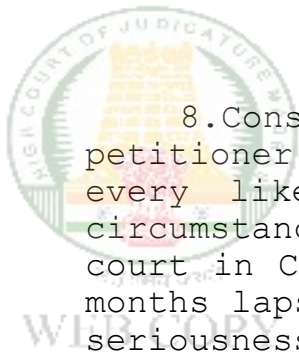
3. Now the case of the prosecution is that this petitioner is the friend of the cousin's brother of the victim girl and by giving false promise, he compelled the victim and had sexual intercourse for several times. So the victim girl became pregnant. Over the above said occurrence, the above said complaint was given by the de-facto complainant.

4. On the side of the prosecution to prove the guilt of the accused, 16 witnesses have been examined and 13 documents were marked. On the side of the accused, none was examined and no document was also exhibited. Finding that this petitioner has committed heinous offence punishable under section 5(j)(ii) r/w 6 of the Prevention of Children from Sexual Offences Act, 2012, the above said conviction and sentence has been imposed.

5. The learned counsel appearing for the petitioner during the course of argument would submit that the age of victim girl has not been scientifically determined and proved in accordance with law before the trial court; The DNA test undertaken during the course of investigation is also improper and the specimen was also not properly analysed; Required quantity of the specimen was also not taken. According to him, the trial court believed the DNA test, which is falsification in nature. He would rely upon the evidence of PW1 for the purpose of argument that she was in love with the petitioner and he continued the above said love affair with the knowledge of her parents and the mobile phone, which belongs to her mother has been used by the victim and it is went on to say that she was consenting party to the above said sexual intercourse and suggestion was made to the victim to the effect that even though, the petitioner is ready to marry her. According to the learned counsel appearing for the petitioner, the age of victim girl is 17 + at the time of the alleged occurrence and she was also consenting party, had love with the petitioner.

6. But the learned Additional Public Prosecutor would submit that the age of the victim is below 17 at the time of alleged occurrence; on the false promise of marrying her, the petitioner had sexual intercourse with the victim girl and there is no evidence that it is a consensual in nature; since the victim is aged 17 years at the time of the alleged occurrence, consent cannot be taken into account.

7. No doubt the age of the victim girl has not been stated by producing the birth certificate. Even though the birth certificate is available in the CD file, it is seen that under promise of marriage only, the petitioner subjected the victim girl to sexual intercourse as pointed by the trial court. The victim girl was below 18 of age at the time of alleged occurrence. So, the consent against the victim girl cannot be taken into account.



8. Considering the seriousness of the allegation, the petitioner is released on bail by suspending the sentence, there is every likelihood of absconding. Child was also born. In such circumstances, earlier suspension petition was dismissed by this court in Crl.MP(MD)No.5495 of 2021, on 01/04/2022. Even though five months lapsed after the above said dismissal order, considering the seriousness of the allegation and *prime facie* proof has been produced by the prosecution during the course of trial, the petitioner is not entitled for suspension and bail.

9. In the result, this criminal miscellaneous petition is dismissed.

sd/-
13/09/2022

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/09/2022

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

TO

- 1 THE OFFICER INCHARGE, CENTRAL PRISON, TRICHY DISTRICT.
- 2 THE SPECIAL JUDGE, (MAHILA COURT), TIRUCHIRAPALLI.
- 3 THE INSPECTOR OF POLICE, ALL WOMAN POLICE STATION, JEEYAPURAM, TRICHY.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.9426 of 2022
in
CRL A(MD) No.332 of 2021
Date :13/09/2022

ER
RS/SBN/SAR.2 (19.09.2022) 3P-5C