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CRL MP(MD)



22

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

Thursday, the Eighth day of September Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.9940 of 2022

IN

CRL A(MD) No.359 of 2022

GOPAL @ GOPALAKRISHNAN

... APPELLANT/ACCUSED NO.1

Vs

STATE REP.BY

THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
USILAMPATTI.

(CRIME NO.36/2013)

... 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 and conviction imposed by the Learned Sessions Judge, Mahalir Neethimandram, Madurai Dated 20/05/2022 in S.C. No.59/2014 and enlarge the petitioner on bail, pending disposal of the main Appeal.

Prayer in CRL A(MD)No.359 of 2022 :

To call for the records to allow this appeal and set aside the impugned judgment of conviction and sentence passed by the Learned Sessions Judge, Mahalir Neethimandram, Madurai dated 20.05.2022 in S.C.No.59 of 2014.

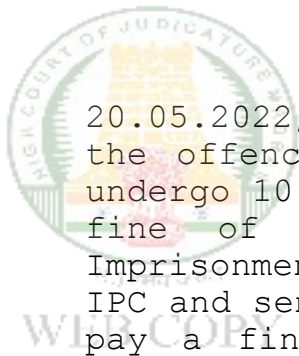
Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.N.DILIP KUMAR, Advocate for the petitioner and of MR.RMS.SETHURAMAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the learned Sessions Judge, Mahalir Neethimandram, Madurai, in S.C.No.59 of 2014, dated 20.05.2014 and enlarge the petitioner on bail, pending disposal of the main appeal.

2.(i) The case of the prosecution is that under false promise of marriage, victim girl namely, P.W.1 was subjected to sexual intercourse and rape by this petitioner on various occasions.

(ii) After completing the formalities of investigation, final report was filed and the same was taken on cognizance. After committal, it was tried by the learned Sessions Judge, Mahalir Neethimandram, Madurai, in S.C.No.59 of 2014. By the judgment, dated

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20.05.2022, the learned Sessions Judge, convicted the petitioner for the offences under Sections 376 and 313 IPC and sentenced him to undergo 10 years Rigorous Imprisonment for each offence and to pay a fine of Rs.1,000/-, in default, to undergo 1 year Simple Imprisonment for each offence and for the offence under Section 417 IPC and sentenced him to undergo 1 year Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo 1 month simple imprisonment and the above sentences were ordered to run concurrently. Aggrieved by the said judgment of conviction and sentence, the petitioner preferred the present appeal along with the above application for suspension of sentence.

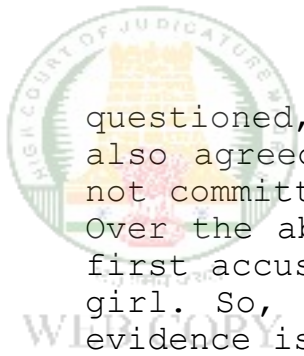
3. On earlier occasion, the petitioner filed a petition for suspension of sentence in Crl.MP(MD)No.6234 of 2022, that was came to be dismissed by this Court, by the order, dated 20.07.2022 on the ground that the period of incarceration is very short. Again, this petition came to be filed after a lapse of 40 days on the ground that, even as per the evidence that has been adduced by the prosecution, case of rape under Sections 376 and 417 is not made out since because P.W.1, who is the victim of crime has not supported the case of the prosecution during the course of cross-examination. Even P.W.2, who is the mother of the victim girl has not supported the case of the prosecution. Medical evidence is also lacking.

4. There was marriage proposal between the victim's family and the accused family. But, later, that was dropped. Over that issue only, to take vengeance, the father of the victim girl namely, P.W.1 gave repeated complaints. That were not taken into account. Only after the third time, complaint has been registered.

5. According to the learned counsel for the petitioner, without any material evidence, he has been convicted.

6. Per contra, the learned Additional Public Prosecutor would submit that P.W.1, the victim girl supported the case of prosecution during the course of chief examination. After a very long time, he moved an application before this Court for recalling P.W.1 for the purpose of cross-examination. This Court has allowed that petition. She has not supported the prosecution case since she was won over. That was not taken by the Trial Court to disbelieve the defence. According to the learned Additional Public Prosecutor, there was earlier abortion in a natural way at the instigation of the petitioner. Even there is no medical records to show the same, the evidence of P.W.1 in the chief examination was taken note.

7. As stated by the learned counsel for the petitioner, P.W.2, who is the mother of the victim girl has not supported the case of the prosecution even before the cross-examination of P.W.1 was done and evidence of P.W.2 has been objected by the petitioner. She has



questioned, they demanded 10 sovereigns of gold jewels. as also agreed by them. But, later, the petitioner stated that he has not committed any mistake and so, he will not marry the victim girl. Over the above said, there was quarrel between them and later, the first accused was married to the some other girl and also the victim girl. So, according to the learned counsel for the petitioner, her evidence is sufficient enough to disbelieve the prosecution version.

8.No doubt, there is some sort of contradicted version and it is a matter for contradiction in the appeal.

9.In the light of the above said fact, the victim girl has not chosen to support the case of the prosecution during the course of cross-examination and P.W.2 has not fully support the case of the prosecution even in chief examination.

10.Considering the period of incarceration and in the light of above discussion, this Court is inclined to suspend the sentence imposed upon the petitioner.

11.Accordingly, the suspension of sentence petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal 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, Mahalir Neethimandram, Madurai, and on further condition that the petitioner shall appear before the said Court once in a week at 10.30 a.m. pending appeal.

sd/-

08/09/2022

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12/09/2022

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

TO

- 1 THE SESSIONS JUDGE, MAHALIR NEETHIMANDRAM, MADURAI.
- 2 THE INSPECTOR OF POLICE, ALL WOMEN POLICE STATION, USILAMPATTI.
- 3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR, MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.N.DILIP KUMAR, Advocate (SR-9838[I] dated 09/09/2022)

ORDER IN

CRL MP(MD) No.9940 of 2022
IN CRL A(MD) No.359 of 2022
Date :08/09/2022

dss

RS/VRS/SAR.4 (12.09.2022) 3P-6C

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