



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

Friday, the Twenty Third day of September Two Thousand and
Twenty Two

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PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.11295 of 2022
in
Crl.A.(MD).No.240 of 2022

ARUMUGAM

... PETITIONER/APPELLANT

Vs

THE STATE REP. BY,
THE INSPECTOR OF POLICE,
KADAYAM POLICE STATION,
TIRUNELVELI 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 enlarge him on bail by suspending the sentence imposed on the petitioner by the Mahila Court, Tirunelveli in SC No.676/2017 dt.3/3/2022, pending disposal of the above Criminal Appeal.

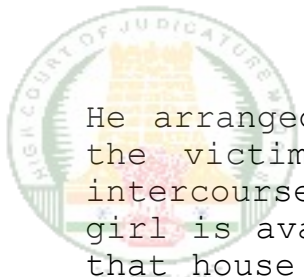
PRAYER IN Crl.A.(MD).No.240 of 2022 :

Pleased to call for the records and set aside the Judgment made in S.C.No.676 of 2017 by the Mahila Court, Tirunelveli dated 03.03.2022.

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

The petitioner was convicted by the Judgment dated 03.03.2022 by the learned Mahila Judge, Tirunelveli, in S.C.No.676 of 2017 stating that the petitioner was found guilty for the offence punishable under Section 376 (1) IPC and sentenced to undergo 10 years rigorous imprisonment and imposed fine of Rs.50,000/-, in default to undergo six months simple imprisonment. Hence, the petitioner seeks suspension of sentence.

2.The case of the prosecution in brief is that on 12.03.2014 at about 09.00 p.m., the first accused under false promise of marriage directed the victim girl to come to Alwaneri and later to a village.



He arranged a rental house there. In that house he tied to the victim girl and later subjected the victim girl to sexual intercourse. He thereafter informed this accused that the victim girl is available in the house and went away. This accused came to that house and subjected the victim girl to sexual intercourse. On the basis of the aforesaid occurrence both accused persons have been charge sheeted and tried. But however, the first accused was absconding. Hence, the case was split up against that person and proceeded against this petitioner.

3. During the course of trial, 17 witnesses have been examined 22 documents were marked apart from 6 material objects.

4. At the conclusion of the trial, the trial Court came to the conclusion that the offence under Section 376(1) has been clearly established by the prosecution beyond all reasonable doubt. So he was convicted and sentenced to undergo 10 years Rigorous Imprisonment and imposed a fine of Rs.50,000/-. Challenging the aforesaid conviction and sentence, the main appeal has been preferred. Pending appeal, this petition has been filed seeking suspension of sentence. Earlier petition that was filed by the petitioner was withdrawn on 24.06.2022.

5. The learned counsel for the petitioner submitted that the victim is aged about 24 years and the petitioner is aged about 29 years. Even the statement that was recorded by concerned Magistrate under Section 164 Cr.P.C., supported the case of the defence. It is the further contention that the aforesaid statement has been suppressed by the prosecution during the trial process. P.W.1, during the course of cross examination, stated that this petitioner also sustained injuries in the aforesaid occurrence. It was also corroborated by the medical evidence. As per evidence of P.W.15, Doctor, it was found that there was no trace of rape for recent occurrence. According to the learned counsel for the petitioner, there is material contradiction.

6. Per contra, the learned Government Advocate (Crl.Side) would submit that even as per the medical evidence, the victim was found with a blood in her private parts and it was also suggested to the victim that the same was not usual natural monthly cycle of the victim girl. It appears that the victim was subjected to sexual intercourse not by one person but two persons.

7. This petitioner was invited by the first accused to commit rape upon the victim after him. The offence of such kind disentitles the petitioner from claiming suspension of sentence. Minor contradiction cannot be taken into account at this stage. Reading of the medical evidence is sufficient enough to disentitle the petitioner out right. She was admitted in the hospital in a very bad condition. Such an inhuman manner of offence said to have been



8. The petitioner is not at all entitled for suspension of sentence and he has to argue the main appeal in custody. Absolutely, as I mentioned earlier, this petitioner deserves no consideration at all.

9. Accordingly, this petition seeking suspension of sentence is dismissed.

10. The Registry is directed to call for the records in the main appeal from the concerned Court and prepare typed set of papers to dispose of the main appeal.

sd/-
23/09/2022

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/09/2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE MAHILA JUDGE, TIRUNELVELI.
2. THE INSPECTOR OF POLICE
KADAYAM POLICE STATION,
TIRUNELVELI DISTRICT.
3. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO :

THE SECTION OFFICER,
CRIMINAL SECTION (RECORDS),
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER IN
CRL MP(MD) No.11295 of 2022
in
Crl.A.(MD).No.240 of 2022
Date :23/09/2022

TA
USK/VR/SAR-II/27.09.2022/3P/6C