



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Thursday, the Twenty Ninth day of September Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

Crl.M.P (MD) No.11748 of 2022

in

Crl.A. (MD) No.598 of 2022

KANNAN

... APPELLANT / SOLE ACCUSED

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
AYYAPURAM POLICE STATION,
TIRUNELVELI DISTRICT.
(IN CRIME NO.46/2018).

... RESPONDENT / COMPLAINANT

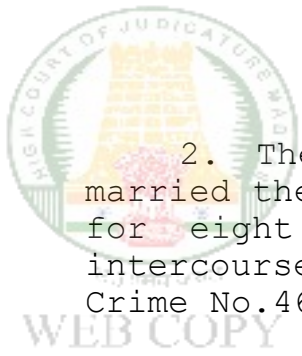
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed against the appellant in SC No.82/2019 on the file of the Honble Sessions Judge, POCSO Special Court, Tirunelveli dated 29/7/2022 and release him on bail till the disposal of the appeal.

Prayer in Crl.A. (MD) No.598 of 2022:

To call for the records connected to the judgment in Spl.S.C.No.82 of 2019 on the file of the Hon'ble Sessions Judge, POCSO Special Court, Tirunelveli dated 29.07.2022 and set aside the conviction and sentence imposed against 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.ALAGUMANI.R, Advocate for the petitioner and of MR.S.MANIKANDAN, Government Advocate (Crl. Side) on behalf of the Respondent, While admitting the Crl.A., the court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed in S.C.No.82 of 2019, dated 29.07.2022, on the file of the Sessions Judge, POCSO Special Court, Tirunelveli, till the disposal of this Criminal Appeal.



2. The case of the prosecution is that the petitioner had married the victim girl, who is a minor, and they stayed at his home for eight days and at that time, the petitioner had sexual intercourse with her and on that basis, FIR came to be registered in Crime No.46 of 2018.

3. The respondent police, after completing the investigation, has filed the final report and after committal, the case was taken on file in S.C.No.82 of 2019 on the file of the learned Sessions Judge, POCSO Special Court, Tirunelveli.

4. The learned Sessions Judge, upon considering the evidences adduced and on hearing the arguments on both the sides, has passed the impugned judgment dated 29.07.2022 convicting the petitioner/accused for the offence under Sections 366 IPC, Section 9 of the Child Marriage Act 2006 and under Section 5(1) r/w of the Protection of Children from Sexual Offence Act, 2012 as under:-

Sl.No	Sections	Punishment	Fine	Default
1.	Under Section 6 of the Prevention of Children from Sexual Offences Act 2012	20 years Rigorous Imprisonment	Rs.1,000/-	One year Rigorous imprisonment
2.	Under Section 366 of the Indian Penal Code	Three years Rigorous Imprisonment	Rs.1,000/-	Three months Rigorous Imprisonment
3.	Under Section 9 of the Child Marriage Act 2006	One year Rigorous Imprisonment	Rs.1,000/-	One month Rigorous imprisonment

Challenging the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

5. The learned counsel for the petitioner would submit that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses.

6. The learned Government Advocate(Crl.Side) appearing for the respondent would submit that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

7. This Court has carefully considered the rival contentions put forward by either side and also perused the materials available on record.



8. The learned counsel for the petitioner pointed out that certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. The fact remains that there are arguable points involved in this criminal appeal and further the criminal appeal is not likely to be taken up for final hearing in the near future and as such, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

9. Accordingly, the substantive sentence of imprisonment alone is suspended 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, POCSO Special Court, Tirunelveli, and on further condition that the petitioner shall appear before the said Court at 10.30 a.m. on the first working day of every English Calendar month, pending disposal of the revision.

sd/-

29/09/2022

/ TRUE COPY /

30/09/2022

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

TO

- 1 THE SESSIONS JUDGE,
POCSO SPECIAL COURT, TIRUNELVELI.
- 2 THE INSPECTOR OF POLICE
AYYAPURAM POLICE STATION,
TIRUNELVELI DISTRICT.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

Crl.M.P(MD)No.11748 of 2022
in

Crl.A.(MD)No.598 of 2022

Date :29/09/2022

tta

MK/SBN/SAR.II/30.09.2022/3P/5C