



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

Monday, the Twenty Eighth day of November Two Thousand and
Twenty Two

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PRESENT

The Hon`ble Mr.Justice G.ILANGOVAN

CRL.M.P.(MD)No.11451 of 2022
in
CRL.A.(MD)No.351 of 2022

V.BALAMURUGAN

... PETITIONER/RESPONDENT/
ACCUSED

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
THILAGARTHEDAL POLICE STATION,
MADURAI CITY
(CRIME NO. 229 OF 2013)

... RESPONDENT/PETITIONER/
COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to pass an order to suspend the sentence passed in S.C.No. 260 of 2016, on the file of the learned Sessions Judge, Mahalir Neethimandram, Madurai dated. 06.04.2022 and enlarge the petitioner on bail pending disposal of the Crl.A.

PRAYER IN CRL.A.(MD)No.351 of 2022:

To call for the records pertaining to Sessions Case No.260 of 2016 on the file of the learned Sessions Judge, Mahalir Neethimandam, Madurai and to set aside the order of conviction passed in S.C.No.260 of 2016 dated 06.04.2022 and acquit the appellant/accused from all the charges.

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.ARUMUGAM C M, Advocate for the petitioner and of M/S.SS.MADHAVAN, Government Advocate(Crl.side) 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.260 of 2016, dated 06.04.2022 and enlarge the petitioner on bail, pending disposal of the Appeal.



2. Case of the prosecution in brief:-

On 12.03.2013 at about 09.00 p.m., the victim girl along with her mother, namely, P.W.1 was waiting in the Madurai Railway Station. The victim girl was mentally retarded and during the above said night hours, the accused kidnapped the victim girl and committed rape upon her and the victim girl came to the place of the mother/P.W.1. On the next day, 13.03.2013 at about 07.30 p.m., both of them travelled in the train from Madurai to Tenkasi. At that time, P.W.1 found her daughter as tired and there was bleeding in her private parts. Therefore, the victim girl and her mother got down at Thirumangalam and went to Government Hospital and during that time, the victim girl told that she was taken by one person and committed rape upon her.

3. After coming to know about the above said occurrence, a complaint was lodged by the defacto complainant before the respondent police and the respondent police registered the case in Crime No.229 of 2013 for the offences punishable under Sections 366 and 376 of IPC.

4. The respondent police, after completing the investigation, has filed the final report and the same was taken on file in S.C.No.260 of 2016.

5. During the trial, the prosecution has examined 17 witnesses as P.W.1 to P.W.17, exhibited 20 documents as Ex.P1 to Ex.P20 and 5 Material Objects as M.O.1 to M.O.5. The defence has adduced neither oral nor documentary evidence.

6. The learned Special Judge, upon considering the evidence and on hearing the arguments of both sides, has passed the impugned Judgment, dated 06.04.2022 and convicted the petitioner/accused for the offence under Sections 366 and 376 IPC and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.10,000/- for each offence, in default to undergo six months Simple Imprisonment for each offence. Aggrieved by the said Judgment of conviction and sentence, the petitioner/accused has preferred the present appeal along with the above Miscellaneous Petition seeking suspension of sentence.

7. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

8. The earlier application that was filed by the petitioner came to be dismissed by this Court in Crl.M.P(MD).No.6134 of 2022 dated 17.08.2022 and this is the second bail petition for suspending the sentence.



9. The learned counsel for the petitioner submitted the victim girl was not examined before the trial Court and not even by the investigation officer. According to him, the inconsistent finding was recorded by the trial Court, as per the alleged conversation between the victim girl and P.W.1, according to him, the victim girl was not in a position to disclose what had happened on the date of occurrence and so the prosecution, the story is doubtful. He would further submit that even as per the evidence of P.W.1, there was a proposal by the accused to marry the victim girl, no other independent witnesses have been examined and the evidence of P.W.1 is not admissible in evidence. It is also relied upon the evidence of P.W.17, where it is stated as follows:

“கிழக்கு கோபுரத்திற்கு எதிரே தெரு தான் உள்ளது என்றும், துர்க்காபவன் ஓட்டல் இல்லை என்றால் சரியல்ல. கிழக்கு கோபுரத்திற்கு எதிர்புறம் ரோடு, அதைத் தாண்டி 3 கடைகள் தள்ளி துர்க்காபவன் ஓட்டல் உள்ளது. மீனாட்சி பஜாருக்கும் துர்க்காபவன் ஓட்டலுக்கும் இடையே சுமார் 3 கீ.மீ தூரம் இருக்குமா என்றால் இருக்கும்.”

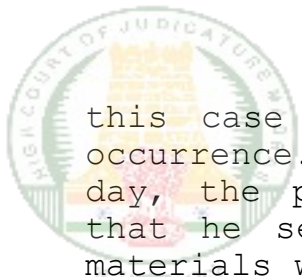
10. No doubt, there is some sort of wrong observation that has been made by the trial Court that the accused has not denied the facts that are mentioned in Ex.P1.

11. Reading of the judgment shows that the trial Court relied upon the Section 8 of the Indian Evidence Act to give credence to the evidence of P.W.1 with regard to the conversation, when the complaint made by the victim girl. Whether such finding in the facts and the circumstances can be taken into account is a matter for consideration in the appeal. It is also seen that there is some sort of difference between the allegation made in the complaint and the evidence given by P.W.1.

12. The medical evidence clearly shows that the materials that have been recovered from the victim girl as well as the accused were found with blood. The mental condition of the victim girl was clearly explained by P.W.16 and in the said statement, he has stated that the victim girl was affected by Psychosis disease.

13. Even though the victim girl was not examined either by the investigation officer or by the trial Court during the process of trial, even two independent witnesses were examined. They supported the case of the prosecution. P.W.10, who is the auto driver identified the accused person stated that the Auto was hired by the accused for the purpose of taking him and another girl, trouble was made with regard to the payment of hire amount, the girl who was with accused tried to bite him. But unfortunately, the victim girl was not identified by him either during the investigation or during the course of trial process.

14. The learned counsel for the petitioner heavily relied upon the evidence of P.W.7 to show that there was identification issue in



this case and some other person was involved in the above occurrence. P.W.7, in his evidence, has stated that on a particular day, the police enquired one mentally retarded person, he stated that he sexually assaulted the victim. On that day, the dress materials were collected from that person. So, this was pointed out by the learned counsel for the petitioner to strengthen his arguments that absolutely it is a case of misidentification.

15. P.W.17, in his evidence, has stated that on 15.03.2013, at about 09.00 p.m., he arrested the accused in front of Durga Bavan Hotel, situated at near Meenakshi Temple. According to the learned counsel for the petitioner, the place of arrest is entirely different from Meenakshi Bazar as spoken to by P.W.7, so, it shows that it is a clear case of misidentification or wrong identification.

16. However, considering the fact that the victim girl was admitted in the hospital with bleeding in her private part, as I mentioned earlier, the accused was also identified by the auto driver, whether, the non-identification of the victim girl by the above said witness, during the course of trial, will affect the prosecution case, is a matter for consideration in the appeal.

17. Considering the gravity of the offence and the manner in which, the offence committed by the petitioner, I find that such nature of person is not at all entitled for the relief of suspension of sentence.

Accordingly, this Criminal Miscellaneous Petition is dismissed.

sd/-
28/11/2022

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/01/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TTA

TO

1. THE SESSIONS JUDGE, MAHALIR NEETHIMANDRAM, MADURAI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
THILAGARTHE DAL POLICE STATION,

MADURAI CITY

<https://www.maduraijudicial.org/>



CRL.M.P.(MD)Λ



22

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.C.M.ARUMUGAM, Advocate (SR-13875[I] dated 29/11/2022)

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ORDER
IN
CRL.M.P.(MD)No.11451 of 2022
in
CRL.A.(MD)No.351 of 2022
Date :28/11/2022

RK/VR/SAR-2 (04/01/2023) 5P/6C