



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

Thursday, the Tenth day of November Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.11936 of 2022
in
CRL.A.(MD)No.608 of 2022

RAJAPANDI

... PETITIONER/APPELLANT

Vs

THE STATE REP. BY,
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
THILAGAR THIDAL, MADURAI.
CR.NO.4 OF 2018.

... RESPONDENT/RESPONDENT

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 petitioner in Spl.S.C No. 88 of 2018 dated 29.08.2022 on the file of the Learned Sessions Judge, Principal Special Court for Exclusive Trial of cases under POCSO Act, Madurai and enlarge the petitioner on bail pending disposal of the above appeal.

PRAYER in CRL.A.(MD)No.608 of 2022 :

Pleased to call for the records and set aside the judgment and sentence passed in Spl.S.C.No.88 of 2018 dated 29.08.2022 on the file of the Learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai allow the 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.PAVEL.V, Advocate for the petitioner and of MR.SS.MADHAVAN, Government Advocate (Criminal) 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, Special Court for Protection of Children from the Sexual Offence Act Cases, Madurai District, dated 29.08.2022, in Special S.C.No.88 of 2018 and enlarge the petitioner on bail, pending disposal of the above said Criminal Appeal.



2.The learned counsel for the petitioner submitted that the petitioner, who is the sole accused in this case, has been found guilty and convicted by the learned Sessions judge, for the offence under Section 5(1) and 6 of POCSO Act, 2012 and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.5,000/- and also imposed Rs.50,000/- as compensation fine in default to undergo simple imprisonment for a period of one year, in Special S.C.No.88 of 2018 on the file of the learned Sessions Judge, Special Court for Protection of Children from the Sexual Offence Act Cases, Madurai District.

3.The case of the prosecution in brief:

The victim girl and the accused person were loving each other for about two months. Later the victim came to know that the accused person has already married and got two children. So, she discontinued the relationship. On 25.02.2018, the victim was taken to the house of the accused and subjected to penetrative sexual assault. On the basis of the above said occurrence, the case was registered and final report was also filed after completing the investigation process and on the side of the prosecution 9 witnesses have been examined, 16 documents were marked and one document was marked on the side of the Court. On the side of the accused none was examined and no document was marked.

4.At the conclusion of the trial, the trial Court came to the finding that the charge that was framed against the accused person was proved beyond all reasonable doubts. On that basis, the accused was found guilty and convicted and sentenced above. Challenging the above said conviction and sentence, appeal has been preferred by the petitioner. Pending appeal, this petition has been filed seeking suspension of sentence.

5.The learned counsel for the petitioner would submit that at the time of occurrence, the victim was aged about 17+ and it was a love affair between the accused and the victim. There is contradiction between the evidence that was given by the victim before the Court and the statement recorded under Section 164 of Cr.P.C. The Birth Certificate of the victim girl was not marked before the trial Court and Doctor's evidence is also quite contrary in nature. PW3 has also given evidence contrary to the evidence of PW2.

6.The learned Government Advocate (Crl. Side) would submit that the prosecution has proved the guilt of the accused beyond all reasonable doubts and the accused person having already married and got two children, by false representation, the victim was taken and subjected to penetrative sexual assault. According to him, the offence of such nature requires no consideration for suspension of



7. It is seen that the accused was already married and got two children also. When that is being the position, the confession on the part of the petitioner that it was a love affair between himself and the victim girl is out of place and cannot be accepted at all. Such a sort of contention is devoid of merits. Even though the victim has stated that she was in love with the accused person and after coming to know about the marital status of the petitioner, she discontinued the relationship, it clearly shows that by false representation, the petitioner was having love affair with the victim. So that cannot be taken into account stating that it is purely love affair. The more damaging is that a suggestion was put to the victim that she was aware of the marital status of the petitioner. The eventary value of 164 Cr.P.C. statement cannot be the matter for consideration unless that was contradicted or corroborated during the course of trial. Even it was suggested to PW1 that they were loving each other and because of the communal issue, her parents objected and the accused was married to some other girl, this contrary defence shows that the petitioner is not projecting true facts. During the Medical Examination, her hymen was found ruptured. So this was taken into account by the trial Court for recording the conviction. Whether the contradictions that are pointed out by the petitioner can be accepted, is a matter for consideration in the appeal.

8. Considering the manner in which the above said sexual assault has been committed and the marital status of this petitioner, I am of the considered view that no ground is made out by the petitioner to suspend the sentence. This petition deserves to be dismissed.

9. Accordingly, this criminal miscellaneous petition is **dismissed**.

sd/-
10/11/2022

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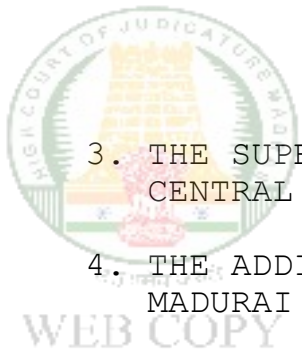
/11/2022

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

TO

1. THE SESSIONS JUDGE,
THE SPECIAL COURT FOR PROTECTION OF CHILDREN
FROM THE SEXUAL OFFENCE ACT CASES,
MADURAI DISTRICT.

2. THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
THILAGAR THIDAL, MADURAI.



3. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

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

ORDER

IN

CRL MP(MD) No.11936 of 2022
in

CRL.A.(MD)No.608 of 2022

Date :10/11/2022

TM

USK/BUC/SAR-III/16.11.2022/4P/5C