



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

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

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.13171 of 2022

IN

CRL A(MD) No.701 of 2022

MAHESH KUMAR

... PETITIONER/APELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
ARUPPUKOTTAI,
VIRUDHUNAGAR DISTRICT.
CRIME NO.02/2020

... RESPONDENT/RESPONDENT

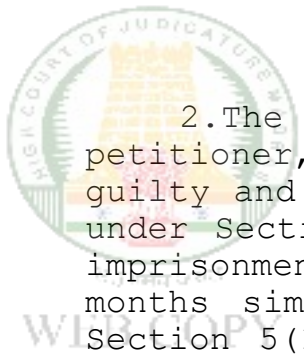
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the sentence imposed by the Special Court (Protection of Children from Sexual Offences Act Cases), Virudhunagar District at Srivilliputtur, in special SC No.25/2020 on 28.07.2022 and release the petitioner on bail pending disposal of the Criminal Appeal.

Prayer in CRL A(MD).701/2022 :

To call for the records and set aside the conviction and sentence imposed by the Special Court (Protection of Children from Sexual Offences Act Cases), Virudhunagar District at Srivilliputtur in Special S.C.No.25/2020 on 28.07.2022 and allow this Criminal 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.JOTHI BASU M, Advocate for the petitioner and of MR.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 Special Judge, Special Court for Protection of Children from Sexual Offences Act Cases, Virudhunagar District at Srivilliputtur, dated 28.07.2022, in Spl.C.C.No.25 of 2020 and enlarge the petitioner on bail, pending disposal of the above said Criminal Appeal.



2.The learned counsel for the petitioner submitted the petitioner, who is the first accused in this case, has been found guilty and convicted by the learned Sessions judge, for the offence under Section 366 IPC and sentenced to undergo 2 years of rigorous imprisonment and imposed a fine of Rs.5,000/- in default to undergo 3 months simple imprisonment and for the offences punishable under Section 5(1) r/w 6 of Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo 20 years of rigorous imprisonment and imposed a fine of Rs.5,000/- in default to undergo 1 years simple imprisonment in Spl.C.C.No.25 of 2020 on the file of the learned Special Judge, Special Court for Protection of Children from Sexual Offences Act Cases, Virudhunagar District at Srivilliputtur. The sentence was ordered to run concurrently. Set off under Section 428 Cr.P.C. was also ordered.

3.The case of the prosecution in brief:

The first accused is alleged to have kidnaped the victim girl, who was aged about 17 at the time of occurrence i.e., on 06.11.2019 and forcibly married her with the help of the accused Nos.2 to 4 on 10.11.2019 in Mutharamman Temple. In spite of objection made by the victim girl, she was subjected to penetrative sexual assault by the first accused. On the basis of the complaint given by the mother of the victim originally the case was registered under girl missing caption and during the course of investigation, the involvement of this petitioner came to the light. So final report was filed against this petitioner and other accused persons stating that they have committed offences under Section 366 IPC, Section 9 r/w 10 of Prevention of Child Marriage Act and Section 5(1) r/w 6 r/w 17 of the POCSO Act. During the trial process on the side of the prosecution 12 witnesses have been examined, 14 documents were marked. Apart from two material objects.

4.At the conclusion of the trial, the trial Court found the petitioner is guilty for the offence punishable under Section 366 IPC and Section 5(1) r/w 6 of the POCSO Act and convicted him as stated above. The other accused persons have been acquitted. Challenging the above said conviction and sentence, the petitioner has filed appeal and pending appeal seeking suspension of sentence the present petition has been filed.

5.The learned counsel for the petitioner straight away submitted that at the time of alleged occurrence the victim is aged about 17 years two months and they were loving each other and coming to know about the love affair only the above said marriage was performed with the consent of his parents. But that marriage was not accepted by the victim girl's parents and their family. Because of that only the above said complaint has been lodged.

6.According to the learned counsel for the petitioner, even now he is ready to take the victim girl, since she has completed 18



7. But however, the learned Government Advocate (Cr. No. 122 of 2022) submitted that the above said victim girl is not now ready to marry the petitioner again and even her parents were also not willing. On the ground there is no possibility of any future marriage.

8. The matter was heard on merits.

9. Perusal of Judgment of the trial Court shows that there is clear evidence to the effect that this petitioner and the victim girl were loving each other for two years. On that ground the victim girl was taken to the house of the first accused and marriage was performed with the first accused. Even though the victim girl has denied as she has not any love affair with the petitioner, it was admitted by her that after the above said alleged marriage, she was living with the first accused in his house for about 7 days. Only on the basis of the complaint given by her mother the above said case has been registered. Since there is clear evidence to the effect that there was love affair between the victim girl and the petitioner, considering the facts on the background, I am of the considered view that whether the offence is made out or not is a matter of consideration in the appeal. On that ground this court is inclined to allow this petition.

10. Therefore, 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 Special Court for Protection of Children from Sexual Offences Act Cases, Virudhunagar District at Srivilliputtur 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/-

14/11/2022

/ TRUE COPY /

15/11/2022

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

TO

- 1 THE SPECIAL JUDGE,
SPECIAL COURT FOR PROTECTION OF CHILDREN FROM
SEXUAL OFFENCES ACT CASES,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTTUR.
- 2 THE INSPECTOR OF POLICE, ALL WOMEN POLICE STATION,
ARUPPUKOTTAI, VIRUDHUNAGAR DISTRICT.



3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

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

+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-12990[I] dated 15/11/2022)

ORDER

IN

CRL MP(MD) No.13171 of 2022

IN

CRL A(MD) No.701 of 2022

Date :14/11/2022

TM

RS/TR/SAR.4 (15.11.2022) 4P-6C