



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

Tuesday, the Thirteenth day of December Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.13179 of 2022

IN

CRL A(MD).703 of 2022

1 K.PALANIVEL

2 B.SANKAR

... APPELLANTS/ACCUSED No.5 & 6

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
NAGAMALAI PUDUKKOTTAI POLICE STATION,
MADURAI DISTRICT.
(CRIME NO.12/2012)

... 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 of Imprisonment imposed by the Learned Sessions Judge, Mahalir Neethimandram, Madurai in SC No.180 of 2014 by the Judgment and conviction dt.03.08.2022 and enlarge the Petitioner/Accused on bail, pending disposal of the above said Criminal Appeal.

PRAYER IN CRL.A(MD).703/2022:

Pleasd to call for the records and set aside the Judgment and conviction dated 03.08.2022 passed by the Learned Sessions Judge, Mahalir Neethimandram, Madurai in S.C.No.180 of 2014 and acquit the appellants.

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.S.SARAVANAKUMAR, Advocate for the petitioners and of Mr.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in SC No.180 of 2014, dated 03/08/2022 by the Sessions Judge, Mahalir Neethimandram, Madurai and enlarge the petitioners/A5 and A6 on bail pending disposal of the criminal appeal.



2.The case of the prosecution is that some time 5 months prior to the date of the occurrence, the father of the victim girl was admitted in the hospital, at that time, the mother of the victim also accompanied Ganesan. In the absence of the parents of the victim, the accused used to talk with the victim and committed repeated rape upon the victim girl. On the basis of the information furnished by the victim girl, the case was registered and after completing the investigation, final report was filed against the accused persons.

3.During the course of trial, on the side of the accused, 14 witnesses were examined and 50 documents marked, apart from 15 material objects were marked. On the side of the accused, one witness was examined, and 4 documents were marked.

4.Since A1 died during the pendency of the trial, the charge against him abated and all others found guilty and accordingly, convicted A2 to A6 for the offence under section 376 IPC and sentenced them to undergo 10 years Rigorous Imprisonment and also pay a fine of Rs.3,000/-, in default to undergo one year Simple Imprisonment and also convicted them for the offence under section 506(ii) IPC and sentenced him to undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo six months Simple Imprisonment.

5.Against which, the criminal appeal has been preferred before this court. Pending appeal seeking suspense of sentence, this petition has been preferred by the petitioners, who are arrayed as A5 and A6.

6.Heard both sides.

7.The learned counsel appearing for the petitioners would submit that even though PW5 is the victim, has not made any complaint and only PW1, who is her father has given the complaint and the victim who is the major ought to have given a complaint. So the prosecution itself is not reliable. He would further submit that there is no material evidence supported the case of the prosecution and has not stated that PW5 is suffering from insanity; Even though DNA profiling tallied with A4, so far as this petitioners are concerned, they have been exonerated exclusively from the paternity test and A1 is the paternal uncle of the victim girl and the petitioners are only brothers and the entire family has been implicated in this case without any basis.

8.The learned Additional Public Prosecutor would submit that it is a pathetic case that the victim who is insane subjected to sexual intercourse by the accused persons repeatedly. So according to him, no indulgence need be shown to the petitioners.



9. Now we will straightaway go to the evidence of the girl. She has been examined as PW5 before the trial court through interpreter. It has been observed that she was not in a position to talk freely. She has given a complete picture with regard to the above said occurrence.

10. Reading of the entire evidence shows that it is nothing, but believable. A suggestion was made to the effect that A4 Vigneswaran was love with her and that was not liked by the parents and panchayat was also arranged in that regard. Apart from that, it was also suggested that in respect of the property issue, there was trouble between them.

11. I find that no ground is made out to suspend the sentence at this stage. Whether the defence that was raised can be accepted or not is a matter for consideration in the main appeal.

12. In the facts and circumstance of the case, this court is not convinced of any reason to suspend the sentence. Accordingly, this criminal miscellaneous petition is **dismissed**.

sd/-

13/12/2022

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

TO

- 1 THE SESSIONS JUDGE,
MAHALIR NEETHIMANDRAM, MADURAI.
- 2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 3 THE INSPECTOR OF POLICE
NAGAMALAI PUDUKKOTTAI POLICE STATION,
MADURAI DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN

CRL MP(MD) No.13179 of 2022
IN
CRL A(MD).703 of 2022
Date :13/12/2022

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