



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

Friday, the Seventh day of January Two Thousand and Twenty Two

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) No.11544 of 2021

IN

CRL A(MD) No.528 of 2021

KATHIRESAN

... PETITIONER/APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
PAPPAKUDI POLICE STATION,
TIRUNELVELI DISTRICT.
CR.NO. 197 OF 2016.

... RESPONDENT/RESPONDENT

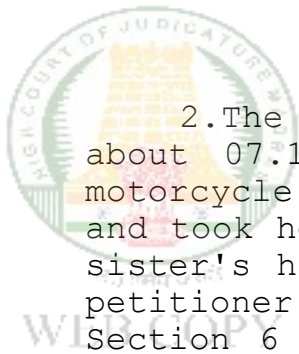
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the Sentence of Imprisonment imposed by the learned Sessions Judge, POCSO Special Court, Tirunelveli in Spl.SC.No.22 of 2019 by the Judgment dt.23.10.2021 and enlarge the Petitioner/Appellant on bail, pending disposal of the above said Criminal Appeal.

PRAYER IN CRL.A(MD) No.528 of 2021:

To call for the records and set aside the Judgment and Conviction dated 23.10.2021, by the learned Sessions Judge, POCSO Special Court, Tirunelveli in Spl.S.C.No.22 of 2019 and acquit 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.PON KARTHIKEYAN R, Advocate for the petitioner and of MR.K.SANJAY GANDHI, GOVERNMENT ADVOCATE on behalf of the Respondent, while admitting the Criminal Appeal, the court made the following order:-

This petition has been filed to suspend the sentence imposed by the learned Sessions Judge, POCSO Special Court, Tirunelveli in Spl.S.C.No.22 of 2019 dated 23.10.2021, till the disposal of the appeal.

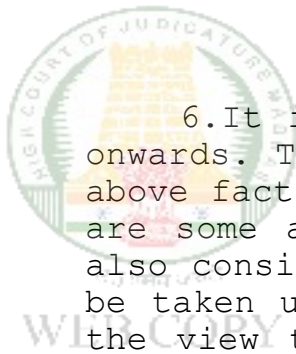


2.The case against the petitioner is that on 14.11.2016 at about 07.15 p.m., the petitioner took the victim girl in his motorcycle to Chennai and stayed there in hotel room for three days and took her to Mumbai and stayed there and then he took her to his sister's house and he committed rape. A case was filed against the petitioner in Crime No.197 of 2016 under Section 366 of IPC and Section 6 of POCSO Act and the same was taken on file as Special Session Case No.22 of 2019 on the file of the learned Sessions Judge, Special Court for POCSO Act, Tirunelveli. The learned Sessions Judge found the accused guilty under Section 366 of IPC and Section 5(1) r/w. 6 of POCSO Act and sentenced him to undergo 20 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo a further period of two years of rigorous imprisonment for the offence under Section 5(1) r/w. 6 of POCSO Act and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo a further period of six months of simple imprisonment for the offence under Section 366 of IPC. Against the conviction and sentence, the petitioner has filed an appeal before this Court in Crl.A.(MD)No.528 of 2021. Along with the appeal, the petitioner has filed the present application for suspension of sentence pending disposal of the said appeal.

3.On the side of the petitioner, it is stated that all the witnesses including the victim turned hostile. The FIR was registered only as 'woman missing'. The victim is aged about 16 years. The evidence of P.W.1, the father of the victim is clear that it was the victim, who left the house on some wordy quarrel. The evidence of victim is clear that there was love affair between the victim and that she herself has voluntarily left with the accused. Only due to some quarrel in the family, the victim run away from the house. The victim got married and she is having two female children. The accused married another girl and he is having one child. The petitioner is in custody from 23.10.2021 onwards. The petitioner was in custody for a considerable period before the commencement of the trial.

4.On the side of the prosecution, it is stated that the judgment is a recent one. The offence is serious in nature. The victim is a minor girl at the time of occurrence. With a false promise of marriage, the accused has sexually assaulted the victim. The offence is against the society. The prosecution has examined 15 witnesses and marked 20 documents and four material objects and proved the case beyond all reasonable doubts. The learned Government Advocate seriously objected to grant suspension of sentence to the petitioner.

5.On the side of the petitioner, it is further stated that the medical document did not support the case of prosecution. The victim left the house on her own accord and prayed the sentence to be suspended. The petitioner is in custody from 23.10.2021 onwards. The petitioner was in custody for a considerable period before the commencement of the trial.



6.It is seen that the petitioner is in custody from 23.10.2021 onwards. The victim girl and others turned hostile. Considering the above facts and circumstances of the case and considering that there are some arguable points for consideration in the main appeal and also considering the fact that the Criminal Appeal is not likely to be taken up for final hearing in the near future, this Court is of the view that the petitioner herein is entitled to the relief of suspension of sentence.

7.Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is ordered to be released on bail on the following conditions:-

(i)the petitioner is directed to execute a bond for a sum of Rs.10,000/-(Rupees ten thousand only) with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Mahila Court, Tirunelveli.

(ii)The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Trial Judge may obtain a copy of their valid identity card to ensure their identity.

(iii)The petitioner shall appear before the trial Court daily at 10.30 a.m., until further orders.

sd/-

07/01/2022

/ TRUE COPY /

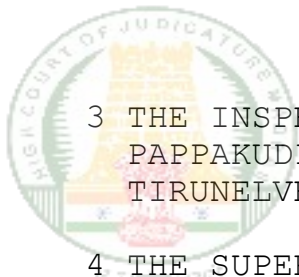
07/01/2022

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 JUDGE,
MAHILA COURT,
TIRUNELVELI.



3 THE INSPECTOR OF POLICE
PAPPAKUDI POLICE STATION,
TIRUNELVELI DISTRICT.

4 THE SUPERINTENDENT,
CENTRAL PRISON,
PALAYAMKOTTAI.

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

ORDER

IN

CRL MP(MD) No.11544 of 2021

IN

CRL A(MD) No.528 of 2021

Date :07/01/2022

RS/CN/SAR.2(07.01.2022) 4P-6C