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

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

PRESENT

The Hon`ble Mr.Justice G.ILANGOVAN

CRL MP(MD) No.13315 of 2022
IN
CRL A(MD)No.604 of 2022

FRANCIS SAVIOUR ... PETITIONER/APPELLANT/ SINGLE ACCUSED

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
KULITHALAI,
KARUR DISTRICT.
(CRIME NO.16/2021) ... RESPONDENT/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 imposed in Spl.S.C.No.27/2017 dated 26.04.2022 passed by the Learned Additional Sessions Judge (Fast Track Mahila Court), Karur, enlarge the petitioner on bail pending disposal of main Criminal Appeal.

PRAYER IN CRL.A(MD)No.604 of 2022:

Pleased to call for the records and set aside the conviction and sentence passed in Spl.S.C.No.27 of 2021 dated 26.04.2022 by the learned Additional Sessions Judge,(Fast Track Mahila Court), Karur.

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.MANIMARAN P, Advocate for the petitioner and of Mr.SS.MADHAVAN, Government Advocate(crl.side) on behalf of the Respondent, the court made the following order:-

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This Criminal Miscellaneous Petition has been filed to suspend the sentence passed in Spl.S.C.No.27 of 2017, dated 26.04.2022, on the file of the learned Additional Sessions Judge (Fast Track Mahila Court), Karur, till the disposal of this Criminal Appeal.

2. Case of the prosecution in brief:-

The victim girl was taken care by the defacto complainant, who is the maternal grandmother of the victim girl. The victim girl's mother died some years back. After the death of the victim girl's mother, the victim girl's father married some other lady. The victim girl was taken care and is in the custody of the defacto complainant and the accused frequently compelled the victim girl to marry him. On 24.07.2021, the defacto complainant went for work. At that time, the victim girl was alone in the house and the petitioner tresspassed into the house and tried to commit rape.

3. After coming to know the above said occurrence, a complaint was lodged by the defacto complainant before the responent police and the respondent police registered the case in Crime No.16 of 2021 dated 25.07.2021 for the offences punishable under Sections 450 of IPC, Sections 4 and r/w 18 of POCSO Act and Sections 506(i) of IPC.

4. The respondent police, after completing the investigation, has filed the final report and the same was taken on file in Spl.S.C.No.27 of 2017.

5. During the trial, the prosecution has examined 13 witnesses as P.W.1 to P.W.13, exhibited 12 documents as Ex.P.1 to Ex.P.12 and marked 1 material object as M.O.1. The defence has adduced neither oral nor documentary evidence.

6. The learned Sessions Judge, upon considering the evidence and on hearing the arguments of both the sides, has passed the impugned judgment dated 26.04.2022 convicting the petitioner/accused for the offence under Section 450 IPC and under Sections 4 and r/w Section 18 of POCSO Act, sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one year Simple Imprisonment in both offences and for the offence under Section 506(i) of IPC and sentenced him to undergo two years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one year and further ordered the above the sentences of imprisonment to run concurrently. Aggrieved by the said judgment of conviction and sentence, the petitioner has preferred the present criminal appeal along with the above miscellaneous petition for suspension of sentence.

7. Heard both sides.

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8. The learned counsel for the petitioner submitted that there was a love affair between the petitioner and the victim girl and the victim girl's age was not properly proved before the trial Court and the evidence of the victim girl clearly shows that there was a some sort of love affair between them.

9. Per contra, the learned Government Advocate (Crl.side) submitted that the victim girl was aged about below 18 years on the date of alleged occurrence. The petitioner made a proposal to the victim girl to marry him, if refuse he will commit suicide, also threatened her and thereafter, committed a sexual assault. According to him, there no ground is made out for suspending the sentence.

10. The victim girl was examined as P.W.5 and she has stated that she was born on 13.01.2004. After completing her +2, she was stayed in her house. The petitioner fell in love with the victim girl and he made a proposal to her and the same was rejected. On 24.07.2021, the petitioner trespassed into the house of the victim girl and tried to sexually assault. During the course of cross-examination, it was admitted by her to the effect that the petitioner had a sexual assault with her before the occurrence and during her statement under Section 164 Cr.P.C before the trial Court, the victim girl admitted the statement of the petitioner.

11. Now, coming to the evidence of P.W.1 over the affair between the petitioner and the victim girl, frequently, trouble arose between the two family members. It shows that there was some sort of contact between the victim girl and the petitioner herein.

12. As per the school certificate, the victim girl was born on 13.01.2004 and on the date of the alleged occurrence (i.e) on 24.07.2021, she was aged about 16+.

13. Now, coming to the medical evidence, it was found that there is a possibility of sexual intercourse before the medical examination.

14. After considering the conduct of the petitioner and the victim girl, at the intervention of the villagers, they were warned. Subsequent to the above, the present complaint has been given.

15. Considering the above facts and circumstances and also the considering the incarceration, this Court is inclined to suspend the sentence imposed on the petitioner.

16. Accordingly, 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

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sureties each for a like sum to the satisfaction of the ed Additional Sessions Judge(Fast Track Mahila Court), Karur, 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/-
28/11/2022

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29/11/2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE ADDITIONAL SESSIONS JUDGE,
(FAST TRACK MAHILA COURT), KARUR.

2 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
KULITHALAI,
KARUR DISTRICT.

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

+1. C.C. to M/S.MANIMARAN P Advocate SR.No.13822

ORDER
IN
CRL MP(MD) No.13315 of 2022
IN
CRL A(MD)No.604 of 2022
Date :28/11/2022

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SA/VR/SAR. /29.11.2022/4P/6C

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