WEB COPY

CRL.M.P.(MD)No.14028 of 2022
in
CRL.A(MD)No.745 of 2022

G.ILANGOVAN, J.

This Criminal Miscellaneous Petition is filed to suspend the conviction and sentence imposed upon the petitioner in Special SC No.45 of 2020, dated 28/10/2021 by the Sessions Judge (FAC), Mahila Court, Pudukottai and enlarge the petitioner on bail pending disposal of the criminal appeal.

2.**The case of the prosecution in brief**:-

The victim girl was studying 3rd standard during the occurrence period. The de-facto complainant is the mother of the victim child, was attending the work in a neighbouring area. So at that time, she used to left the child in the house of one Selvi. On the particular day of occurrence also, similarly she left the victim child under the care of the the above said Selvi and went for job. She returned from the work to the house. At that time, she was told by the victim child that one person removed her dress and touched her private part. He gave 100 rupees asking her not to disclose the same others. The above said person had also shown the knife and threatened her. So on the basis of the occurrence, the case was registered and after

https://www.mhc.tn.gov.in/judis

WEB COPY

completing the formalities of investigation, final report was filed in Special SC No.45 of 2022 for the offence under section 8 of the POCSO Act, 2012.

3.On the side of the prosecution, 10 witnesses examined and 11 documents were marked. On the side of the accused, no oral or documentary evidence was adduced.

4.At the conclusion of the trial, the trial court found the accused guilty and accordingly, convicted and sentenced him to undergo five years of rigorous imprisonment and imposed a fine of Rs.30,000/-, in default to undergo 1 year Simple Imprisonment.

5.Challenging the above said conviction and sentence, this appeal has been preferred. Pending appeal, this criminal miscellaneous petition has been filed.

6.The learned counsel appearing for the petitioner would submit that there is one day delay in preferring the complaint and there are contradictory versions by PW1 herself with regard to the above said occurrence and at one point of time, she has stated that she returned from the work at 6.00 pm and another point of time, she has stated that at 2.30 pm, he came to know about the occurrence; It is further submitted by him that on the date of the

https://www.mhc.tn.gov.in/judis

WEB COPY

occurrence, she went to the police station, but the case was registered only on the next day; So if really, she came to know the occurrence at 2.15 pm itself, she would not have waited till the next day. Similarly, she has also stated the occurrence time differently. According to him, this contra evidence is sufficient enough for sustaining the sentence.

7.Per contra, the learned Additional Public Prosecutor would submit that the age of the victim is only seven years at the time of occurrence, who is stated to be sexually abused by the petitioner, who is aged about 40 years. The evidence has been clearly let in by the prosecution.

8.Reading of the entire judgment as well as the evidence, it is seen that absolutely, there is no motive between the petitioner and the de-facto complainant to falsely implicate him into the above said offence. The evidence of the victim girl is also clear with regard to the above said manner of sexual assault. Absolutely, I find no reason to disbelieve the evidence of the child now.

9.Whether any valid point is available for the petitioner which has to be raised only at the time of argument in the main appeal.

https://www.mhc.tn.gov.in/judis

WEB COPY

10.Considering the seriousness of the allegation and the manner in which the above said sexual assault has been allegedly committed, I am of the considered view that this is not a fittest case to suspend the sentence. If suspended, then there is every possibility for the victim to be again abused by the petitioner.

11.In the result, this criminal miscellaneous petition is **dismissed.**

12.After passing of the order, the learned counsel appearing for the petitioner would submit that the appeal may be posted for hearing. So the Registry is directed to prepare the typed set papers and list the case for hearing, on 12/12/2022.

29.11.2022

Index : Yes/No
Internet : Yes/No
er

https://www.mhc.tn.gov.in/judis

WEB COPY

G.ILANGOVAN, J.

er

CRL.M.P.(MD)No.14028 of 2022
in
CRL.A.(MD)No.745 of 2022

29.11.2022

https://www.mhc.tn.gov.in/judis