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CRL MP(MD) N



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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.ILANGO VAN

CRL MP(MD) No.13478 of 2022

IN

CRL A(MD) No.448 of 2022

SATHISH KUMAR

... PETITIONER/APELLANT

Vs

State Rep.by
THE INSPECTOR OF POLICE
MUSIRI POLICE STATION,
TIRUCHIRAPPALLI DISTRICT.
(CRIME NO.1546/2020)

... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to enlarge the petitioner on bail by Suspending the Sentence imposed upon the petitioner in Spl.SC.No.115/2020 on the file of the Learned Sessions Judge, Mahila Court, Trichirappalli, Trichirappalli District by judgment dated 20.05.2022 and pending disposal of the main criminal appeal.

Prayer in CRL A(MD).448/2022 :

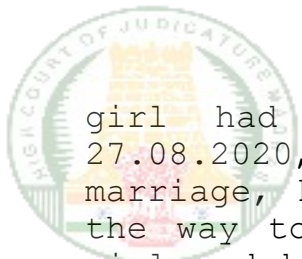
To call for the records in Spl.S.C.No.115 of 2020 on the file of the Learned Sessions Judge, Mahila Court, Tiruchirappalli, Tiruchirappalli District, and set aside the judgment dated 20.05.2022 and acquit the appellant of the Charge leveled against the petitioner.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR.M.KARUNANITHI, Advocate for M/S.ARUNRAJ K, 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 has been filed to suspend the sentence passed in Spl.S.C.No.115 of 2020, dated 20.05.2022, on the file of the learned Sessions Judge, Mahila Court, Tiruchirappalli, till the disposal of this Criminal Appeal.

2. Case of the prosecution in brief:-

The victim girl was aged about 16+, at the time of the occurrence. The victim girl had completed her 11th Standard at Government Girls Higher Secondary School, Musiri. Due to Corona, she was working in fancy store temporarily. At that time, the victim



girl had developed love affair with the petitioner on 27.08.2020, at about 06.45 p.m, the petitioner on the promise of marriage, had kidnapped the victim girl in Mahindra Verito Car. On the way to Namakkal, the petitioner tied the Thali to the victim girl and both of them stayed and spent the night hours in the car and during that time, she was sexually abused and similarly, it was continued on 28.08.2020.

3.A complaint was lodged by the defacto complainant stating that his daughter is missing and on that ground, the respondent police registered the present case. After coming to know that the complaint was lodged before the respondent police, the petitioner dropped the victim girl at Periyar bridge at Musiri on 29.08.2020.

4.The respondent police, after recording the statement of the victim girl, altered the case from 'Girl Missing' to Section 366(A) IPC, Sections 5(1) r/w 6 of POCSO Act and Section 9 of Prohibition of Child Marriage Act.

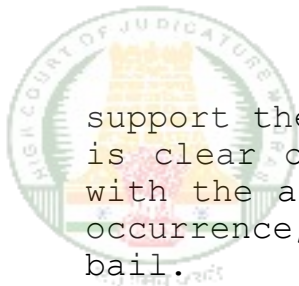
5.The respondent police, after completing the investigation, has filed the final report and the same was taken on file in Spl.S.C.No.115 of 2020.

6.During the trial, the prosecution has examined 16 witnesses as P.W.1 to P.W.16, exhibited 19 documents as Ex.P.1 to Ex.P.19 and marked 1 material object as M.O.1. The defence has adduced neither oral nor documentary evidence.

7.The learned Sessions Judge, upon considering the evidence and on hearing the arguments of both the sides, has passed the impugned judgment, dated 20.05.2022 convicting the petitioner/accused for the offence under Section 366 IPC and sentenced him to undergo five years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months Simple Imprisonment, for the offence under Section 9 of Prohibition of Child Marriage Act, 2006 and sentenced him to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo three months Simple Imprisonment and for the offence under Sections 5(1) r/w 6(1) of POCSO Act, 2012 and sentenced him to undergo twenty years Rigorous Imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo six months Simple Imprisonment 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.

8.Heard both sides.

9.The learned counsel for the petitioner submitted that the age of the victim girl was not proved before the trial Court and no Birth Certificate was produced and also the medical evidence did not



support the case of the prosecution. He would further submit. It is clear on the admission that the victim girl was in love affair with the accused and also submitted that on the date of the alleged occurrence, the victim girl is aged about 17+. Hence, he prays for bail.

10. Per contra, the learned Government Advocate (Crl.side) submitted that the victim is aged about 15+ years and that was not the stage for choosing the life partner. According to him, the victim girl is minor and she was subjected to sexual intercourse and the petitioner tied Thali, no interference was called for.

11. The earlier application that filed by the petitioner came to be dismissed by this Court in Crl.M.P(MD).No.8296 of 2022 dated 18.08.2022 and this is the second bail petition.

12. Reading of the entire evidence of the victim girl shows that there was some love affair between the petitioner and the victim girl. Even as per the evidence that has been produced before this Court, the age of the victim girl is 16+, at the time of the occurrence. As rightly pointed out by the Government Advocate (Crl.side), it is not a mature age to choose the life partner.

13. As mentioned above, the petitioner and the victim girl were roaming in and around in the car at Namakkal for two days and during that time, as I mentioned above, she was subjected to sexual intercourse and her age is not mature to choose the life partner.

14. Considering the above facts and circumstances and also the considering the incarceration for a period of five months, this Court is inclined to suspend the sentence imposed on the petitioner.

15. 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 sureties each for a like sum to the satisfaction of the learned Session Judge, Mahila Court, Trichirappalli, Trichitsppalli District, 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 SESSIONS JUDGE, MAHILA COURT, TRICHY.

2 THE INSPECTOR OF POLICE, MUSIRI POLICE STATION,
TIRUCHIRAPPALLI DISTRICT.

3 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.

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

+1 CC to M/s.K.ARUNRAJ, Advocate (SR-13858[I] dated 28/11/2022)

ORDER

IN

CRL MP(MD) No.13478 of 2022

IN

CRL A(MD) No.448 of 2022

Date :28/11/2022

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RS/SSS/SAR. (29.11.2022) 4P-6C