



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

Wednesday, the Ninth day of November Two Thousand and Twenty Two

PRESENT

WEB COPY

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.13439 of 2022

IN

CRL A(MD) No.306 of 2022

MARUTHUPANDIYAN

... PETITIONER/APPELLANT/
SOLE ACCUSED

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
NARIKUDI POLICE STATION,
VIRUDHUNAGAR DISTRICT.
(CRIME NO.91/2018)

... 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 on the petitioner by the Learned Sessions Judge, Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur by its Judgement in Spl.SC.No.40/2019 dated 10.02.2022 and enlarge him on bail pending disposal of the Criminal Appeal.

PRAYER CRL A(MD)No.306 of 2022:

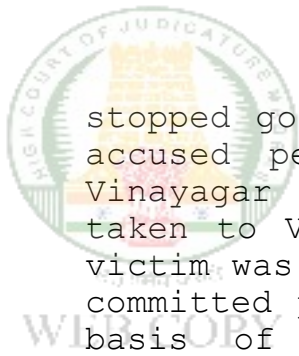
Pleased to call for the records of the impugned judgment made in Spl.S.C.No.40 of 2019 on the file of the Learned Sessions Judge, Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur dated 10.02.2022 and set aside the same.

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.JEGADEESH PANDIAN M, 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 petition has been filed to suspend the sentence imposed by the learned Sessions Judge, Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur, in Spl.S.C.No.40 of 2019, dated 10.02.2022.

2. The victim was born on 11.10.2001. She was working as a daily wager in Jeyavilas Mill, Melakandamangalam and later, she

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



stopped going to the work. On 21.05.2018 at about 11.00 a.m. the accused person made a mobile call and called her to come to Vinayagar Temple in Madurai. On the promise of marriage, she was taken to Vinayagar Temple and the accused tied Thali. Later, the victim was taken to Tirupur and during their stay there, the accused committed penetrative sexual assault on her so many times. On the basis of the complaint given by the parents, the case was registered. The victim girl was secured and the accused was arrested. After completing the formalities of investigation, the final report was filed.

3. During the course of trial process, 11 witnesses have been examined and 12 documents were marked on the side of the victim girl. On the side of the accused, none were examined and no documents were marked. On completion of trial, the trial Court found the charges, that are framed against the accused, have been proved beyond reasonable doubt and the accused was convicted in the following manner:

(a) the accused was convicted for the offence under Section 366 of IPC and sentenced to undergo 10 years of imprisonment and imposed a fine of Rs.1,000/- in default to undergo 6 months simple imprisonment and also convicted for the offence under Section 6 r/w 5(1) of POCSO Act and sentenced to undergo ten years imprisonment and directed to pay a fine of Rs.1,000/- in default to undergo 6 months simple imprisonment.

4. Now challenging the conviction and sentence, the Criminal Appeal has been filed. Pending appeal, this petition has been filed seeking suspension of sentence.

5. The earlier application that was filed by the accused in CrI.M.P.(MD)No.5372 of 2022 was dismissed on 30.08.2022. This is the second application in sequence.

6. The learned counsel for the petitioner submitted that there was love affair between the victim girl and this petitioner. The victim girl is aged about 17 years at the time of alleged occurrence. Now she is married to some other person and she is living with him. Even as per the prosecution evidence, the alleged marriage was not also proved.

7. Per contra, the learned Government Advocate (CrI.Side) would submit that para 8 and 9 of the previous order dated 30.08.2022 made in CrI.M.P.(MD)No.5372 of 2022 is sufficient enough to reject the argument. No new ground has been made now and no interference is also called for.

8. A perusal of records shows that the victim girl gave a statement under Section 164(5) of Cr.P.C., during the course of investigation before the learned Judicial Magistrate No.II, Satur



stating that she went along with the accused person to Tiruppur and stayed there in a house for about 15 days. On the basis of the complaint given by the parents, she was secured and a case was also registered against the petitioner. P.W.1, during the course of investigation, has also stated that she was informed that the victim girl was taken to Madurai, where the accused married the victim girl by tying Thali and later they went to Tiruppur.

9. During the course of investigation, the victim girl has stated that she was forced to have sexual contact with the accused, while staying at Tiruppur for about 15 days. It is also seen that both the petitioner as well as the victim girl were working in the same mill, where they had developed love. So, the question, which arises for consideration in the appeal, is whether in the light of the evidence given by the victim girl, the offence of kidnapping, penetrative sexual assault has been proved by the prosecution?. The fact that she was staying with the accused for about 15 days is admitted. Her date of birth is 11.10.2001. The alleged occurrence is 21.05.2018. It is seen that on the date of the alleged occurrence, she was 17 years.

10. The facts in this case *prima facie* show that there was love affair between the victim girl and the accused. But however, the fact remains that she was minor at the time of the alleged occurrence. During the medical examination, it was found that her hymen was also ruptured and this suggests that the victim girl was subjected to intercourse.

11. Considering the fact that there was love affair between the victim girl and the accused person and the victim was aged about 17 years at the time of alleged occurrence and he is in custody from 10.02.2022, this Court is inclined to suspend the sentence imposed on the petitioner.

12. 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 Sessions Judge, Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur 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/-

09/11/2022

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10/11/2022

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



TO

1 THE SESSIONS JUDGE,
SPECIAL COURT FOR POCSO ACT CASES,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
NARIKUDI POLICE STATION,
VIRUDHUNAGAR DISTRICT.

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

ORDER

IN

CRL MP (MD) No.13439 of 2022

IN

CRL A (MD) No.306 of 2022

Date :09/11/2022

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SA/TR/SAR.2/10.11.2022/4P/5C