



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

Wednesday, the Fourteenth day of December Two Thousand and Twenty
Two

WEB COPY

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.14885 of 2022

IN

CRL A(MD) No.706 of 2022

NAGAPANDI

... APPELLANT/ACCUSED NO.2

Vs

State Rep.by
THE INSPECTOR OF POLICE
NAGAMALAIPUDHUKOTTAI POLICE STATION,
MADURAI.
CRIME NO.12 OF 2012.

... 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/Appellant passed in SC.No.180 of 2014 on the file of the Learned Sessions Judge, Mahilar Neethimandram, Madurai dt.3.8.2022 and enlarge the Petitioner on bail pending disposal of the instant Crl.A.

Prayer in CRL A(MD).706/2022 :

To call for the records in S.C.No.180 of 2014 on the file of the Learned Sessions Judge, Mahalar Neethimandram, Madurai and set aside the sentence and conviction awarded to A2 by the order dated 03.08.2022.

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.N.ANANTHAPADMANABHAN, Advocate for M/S.APN LAW ASSOCIATES for the petitioner and of MR.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in SC No.180 of 2014, dated 03/08/2022 by the Sessions Judge, Mahalar Neethimandram, Madurai and enlarge the petitioner/A2 on bail pending disposal of the criminal appeal.

2.The case of the prosecution is that some time 5 months prior to the date of the occurrence, the father of the victim girl



admitted in the hospital, at that time, the mother of the victim also accompanied Ganesan. During the absence of the parents of the victim, the accused used to talk with the victim and committed repeated rape upon the victim girl. On the basis of the information furnished by the victim girl, the case was registered and after completing the investigation, final report was filed against the accused persons.

3. During the course of trial, on the side of the accused, 14 witnesses were examined and 50 documents were marked, apart from 15 material objects were marked. On the side of the accused, one witness was examined, and 4 documents were marked.

4. Since A1 died during the pendency of the trial, the charge against him abated and all others found guilty and accordingly, convicted A2 to A6 for the offence under section 376 IPC and sentenced them to undergo 10 years Rigorous Imprisonment and also pay a fine of Rs.3,000/-, in default to undergo one year Simple Imprisonment and also convicted them for the offence under section 506(ii) IPC and sentenced him to undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo six months Simple Imprisonment.

5. Against which, the criminal appeal has been preferred before this court. Pending appeal seeking suspension of sentence, this petition has been preferred by the petitioner, who is arrayed as A2.

6. Heard both sides.

7. The learned counsel appearing for the petitioner would rely upon the statement that was given by the petitioner during the course of 313 Cr.P.C proceedings and he has given a statement to the effect that A4 was in love with the victim girl. It is also submitted that the victim girl was not able to identify the accused persons, who committed the rape upon her. Whether non identification by the victim either during the course of the investigation or during the course of the trial affects the prosecution case is the only issue to be decided in the appeal. The petition filed by A5 and A6 has been dismissed by this court yesterday and this petitioner is also standing on the very same footing. The gravity of the offence, manner in which the rape has been committed on the victim girl who is a mentally challenged person, is not entitled to suspend the sentence.

8. The learned Additional Public Prosecutor by relying upon the judgment of the Hon'ble Supreme Court reported in the case of **2017 (4) SCC 393** for the purpose of argument that result of the DNA profiling alone cannot be a basis for acquittal and other circumstances must also be taken into account, also cited the judgment reported in **1996 (3) SCC 384** that no corroboration is required with regard to the offence under section 376 IPC. All these matters can be taken into



account and consideration only at the time of appeal as mentioned earlier, this is not a fittest case to exercise the power under section 389 Cr.P.C.

9. In the facts and circumstance of the case, this court find no reason to suspend the sentence. Accordingly, this criminal miscellaneous petition is **dismissed**.

sd/-

14/12/2022

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/01/2023

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

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TO

- 1 THE SESSIONS JUDGE, MAHALIR NEETHIMANDRAM, MADURAI.
- 2 THE INSPECTOR OF POLICE, NAGAMALAIPUDHUKOTTAI POLICE STATION, MADURAI.
- 3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL MP(MD) No.14885 of 2022

IN

CRL A(MD) No.706 of 2022

Date :14/12/2022

RS/SSS/SAR.1(09.01.2023) 3P-5C