



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

Thursday, the Fifteenth day of December Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.15076 of 2022
in
CRL.A.(MD) No.240 of 2022

ARUMUGAM

... PETITIONER/APELLANT

Vs

THE STATE REP. BY,
THE INSPECTOR OF POLICE,
KADAYAM POLICE STATION,
TIRUNELVELI DISTRICT.

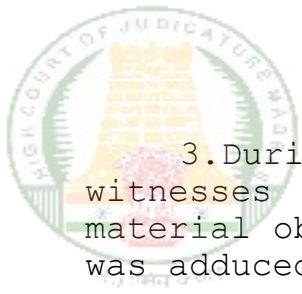
... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspending the Sentence imposed by the Mahila Judge, Tirunelveli in SC.N.676 of 2017 dt.3.3.2022 and enlarge the appellant on bail pending disposal of the above Criminal Appeal.

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.R.ANAND, Advocate for M/S.MAHARAJA.M, Advocate for the petitioner and of MR.B.NAMBISELVAN, 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.676 of 2017, dated 03/03/2022 by the Mahila Judge, Tirunelveli and enlarge the petitioner on bail pending disposal of the criminal appeal.

2.The case of the prosecution is that on 12/03/2014, at about 09.00 pm, the first accused under false promise of marriage directed the victim girl to come to Alwaneri and later to a village. He arranged a rental house there. In that house, he tied Thali to the victim girl and later subjected to victim girl to sexual intercourse. He thereafter informed this petitioner that the victim girl is available in the house and went away. This petitioner came to that house and subjected the victim girl to sexual intercourse. On the basis of the aforesaid occurrence, both accused persons have been charge sheeted and tried. But however, the first accused was absconding. Hence, the case was split up against that person and processed against this petitioner.



3. During the course of trial, on the side of the accused, 17 witnesses examined and 22 documents were marked, apart from 6 material objects. On the side of the accused, no oral or documentary was adduced.

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4. At the conclusion of the trial, the trial court came to the conclusion that the offence under section 376(1) IPC has been clearly established by the prosecution beyond all reasonable doubt against this petitioner. So he was convicted and sentenced to undergo 10 years Rigorous Imprisonment and imposed a fine of Rs.50,000/- with default clause.

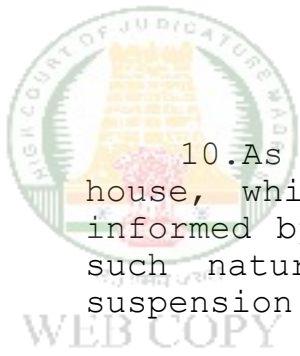
5. Against which, the criminal appeal has been preferred before this court. Pending appeal seeking suspense of sentence, this petition has been preferred by the petitioner.

6. Heard both sides.

7. The earlier application was dismissed by this court by observing that the minor contradiction cannot be taken into account at this stage and the victim was admitted in the hospital in a very bad condition and such an inhuman manner of offence said to have been committed.

8. The learned counsel appearing for the petitioner now would submit that some important factors were not brought to the notice of this court on the earlier occasion. According to him, the victim has given three contradictory versions under section 164 Cr.P.C, which was recorded during the course of investigation, which was not produced before the trial court at the time of trial. It was completely suppressed. According to him, the above said was in favour of the petitioner/accused. It is further submitted that before the Doctor, who examined the victim, she has stated that the first accused did not commit any rape and only this petitioner and quite contrary, she has given a statement to the court implicating A1 also. The split up case against A1 was already disposed of. It is further stated by the victim that she was staying in the house, which was arranged by A1 for about five days. Thereafter, only the above said complaint has been given. So according to him, this contradictory version as well as the statement under section 164 Cr.P.C is sufficient enough for suspending the sentence, in so far as this petitioner is concerned.

9. No doubt, there are contradictory versions about the occurrence, whether this benefit will accrue in favour of the petitioner is a matter of appeal. The victim has admitted in the hospital with bleedings in her private parts. Who is responsible for the above said is also a matter for consideration in the appeal.



10.As mentioned above, she was taken by A1 and stayed in the house, which was arranged by him and later, this petitioner was informed by A1 to commit the rape. When this serious allegation of such nature, I am of the considered view that the relief of suspension should not be extended to the petitioner.

11.In the result, this criminal miscellaneous petition is **dismissed**. Since records have been received from the concerned court, the Registry is directed to prepare the typed set of papers and list the matter for hearing the main appeal, on 11/01/2023.

sd/-
15/12/2022

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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 MAHILA JUDGE,
TIRUNELVELI.
2. THE INSPECTOR OF POLICE,
KADAYAM POLICE STATION,
TIRUNELVELI DISTRICT.
3. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.15076 of 2022
Date : 15/12/2022

USK/SSS/SAR-I/04.01.2023/3P/5C