



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

Thursday, the Sixteenth day of February Two Thousand and Twenty
Three

WEB COPY

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.2267 of 2023

IN

CRL A(MD)No.52 of 2023

MUTHUKUMARI

... PETITIONER/APPELLANT/
SOLE ACCUSED

Vs

The State rep.by,
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
MANAMADURAI,
SIVAGANGAI DISTRICT.
(IN CRIME NO.14/2014).

... RESPONDENT/RESPONDENT

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 vide Judgemetn dt.9/12/2022 made in SC No.145/2016 on the file of the Fast Track Mahila Court, Sivagangai and enlarged me on bail pending disposal of the above Criminal Appeal.

PRAYER IN CRL.A(MD)NO.52 of 2023:

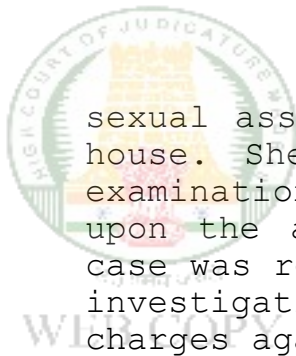
To call for records and set aside the Judgment dated 09.12.2022 made in S.C.No.145 of 2016 on the file of the Fast Track Mahila Court, Sivagangai.

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.MAYILVAHANA RAJENDRAN C, Advocate for the petitioner and of M/S.B. NAMBISELVAN, Additional Prosecutor on behalf of the Respondents the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence dated 09.12.2022 passed in S.C.No.145 of 2016 against the Petitioner / Appellant by the Fast Track Mahila Court, Sivagangai and enlarge the petitioner on bail, pending disposal of the Criminal Appeal.

2.The case of the prosecution in brief:-

The victim girl was aged about 19 years old at that time of occurrence, she was mentally ill, she was subjected to frequent



sexual assault by the accused person whenever she was alone in the house. She was taken to the hospital, at that time of medical examination, it was found that she was eight month pregnant. Based upon the above said occurrence and the information of P.W.1, the case was registered against the accused person. At the conclusion of investigation the First Information Report has been filed and made charges against the accused under Section 376(2), (1) and (n) of IPC.

3. Before the trial Court, on the side of the prosecution, 22 witnesses were examined as P.W.1 to P.W.22 and 12 documents were marked as Ex.P.1 to Ex.P.12 and 4 material objects were marked as M.O.1 and M.O.4.

4. At conclusion of the trial, the trial Court has found that the accused has found guilty under Section 376(2), (1) and (n) of IPC. Accordingly, the accused was convicted and sentenced to undergo 10 years of Rigorous Imprisonment with fine of Rs.50,000/- each and in default to undergo Rigorous Imprisonment of further period of one year.

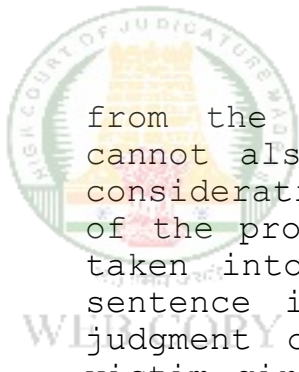
5. Challenging the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the instant Miscellaneous Petition seeking suspension of sentence.

6. The learned Counsel for the Petitioner would submit that DNA report that was taken during the course of investigation was found to be negative so far as this appellant is concerned. Whether the victim girl was accessed by some other person was not properly considered by the trial Court. Since the DNA report shows positive result, the non access by the other person is a relevant factor, which was not properly considered by the trial Court.

7. Per contra, the learned Additional Public Prosecutor would submit that based upon the medical evidence only, the accused has been fixed and no indulges is required for suspending the sentence.

8. The pregnancy of victim is admitted, that is also established, since there is no denial on the part of the accused. Since according to him, DNA report proved negative, he cannot be held responsible for the above said pregnancy. The victim was examined as P.W.3 before the trial Court through interpreter. Through her signs and verbal disclosures, it is revealed that she has pointed out her finger towards the accused person by showing her private parts for the question by the prosecution as to what happened to her and some question was also asked whether one Vijaykumar and friends of her brother used come to the house, she stated in the negative with regard to Vijaykumar and positive with regard to the friends of her brother.

9. No doubt that DNA report turned negative against the petitioner in this case, so far as the present petition is concerned. But



from the evidence of victim girl, the petitioner's in it cannot also completely ruled out. So, the point which raised for consideration is in the absence of any medical support to the case of the prosecution. Whether the evidence of the victim girl can be taken into account for recording the case of the conviction and sentence is the only consideration in the appeal. Moreover, the judgment of the recent origin, considering the evidence of the victim girl, this Court is not inclined to suspend the sentence at this stage.

10. Accordingly, this Criminal Miscellaneous Petition is dismissed.

sd/-
16/02/2023

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/02/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Indu

TO

- 1 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
MANAMADURAI,
SIVAGANGAI DISTRICT.
- 2 THE SUPERINTENDENT,
CENTRAL PRISON,
MADURAI.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO:

FAST TRACK MAHIL COURT,
SIVAGANGAI.

+1. C.C. to M/S.MAYILVAHANA RAJENDRAN C Advocate SR.No.2428(I)

ORDER
IN
CRL MP(MD) No.2267 of 2023
IN
CRL A(MD)No.52 of 2023
Date :16/02/2023