



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

Monday, the Thirteenth day of March Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.2702 of 2023

AND

CRL A(MD) No.122 of 2022

BHARATHIYAR

... APPELLANT/SOLE ACCUSED

Vs

THE STATE OF TAMILNADU REP. BY,
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
KULITHALAI,
KARUR DISTRICT.
(CRIME NO. 9 OF 2019)

... 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 and grant bail to the Appellant / Sole Accused against the Judgment dated 21.01.2022 in Spl S.C no. 06 of 2019 on the file of the Additional Sessions Judge (Fast Track Mahila court) Karur District in Crime No. 09 of 2019 on the file of the respondent police pending disposal of the instant Criminal Appeal.

PRAYER IN CRL A(MD) No.122 of 2022:-

To call for the records of the judgement dated 21.01.2022 in Spl S.C no. 06 of 2019 on the file of the Additional Sessions Judge (Fast Track Mahila court) Karur in Crime No. 09 of 2019 on the file of the respondent police and set aside the same and acquit the Appellant/Sole Accused.

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.SEENI SYED AMMAL, Advocate for M/S.LAJAPATHI ROY T, Advocate for the petitioner and of MR.S.S.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.06 of 2019, dated 21.01.2022, on the file of the learned Additional Sessions Judge (Fast Track Mahila Court), Karur, till the disposal of this Criminal Appeal.



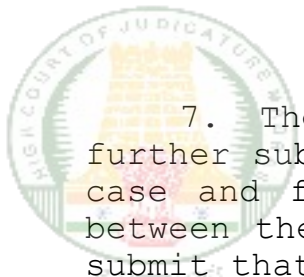
2. The case of the prosecution is that on 08.06.2019 at about 01.00 p.m., the petitioner/sole accused compelled and threatened the victim girl to come to the sugarcane field of P.W.2 and committed the offence of penetrative sexual assault on the victim girl and that again on 01.09.2019 at about 05.30 p.m., while the victim girl went outside to answer her nature's call, the petitioner compelled her and took her forcibly to the sugarcane field of P.W.2 and committed the offence of penetrative sexual assault on the victim girl and on that basis, FIR came to be registered in Crime No.9 of 2019 for the offences under Sections 5(1) and 6 of Protection of Child from Sexual Offences Act, 2012.

3. The respondent police, after completing the investigation, has filed the final report and after committal, the case was taken on file in Spl.S.C.No.06 of 2019 and the same was pending on the file of the learned Additional Sessions Judge (Fast Track Mahila Court), Karur.

4. During trial, the prosecution has examined 14 witnesses as P.W.1 to P.W.14, exhibited 10 documents as Ex.P.1 to Ex.P.10 and marked 1 material object as M.O.1. The accused has examined 11 witnesses as D.W.1 to D.W.11, exhibited 10 documents as Ex.D.1 to Ex.D.10 and marked 1 material object as M.O.1 series.

5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 21.01.2022 finding the petitioner guilty for the offences under Section 366 IPC and Section 6 of Protection of Child from Sexual Offences Act, 2012 and sentenced him to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.10,000/- in default, to undergo Simple Imprisonment for 1 year for the offence under Section 366 IPC and sentenced him to undergo Rigorous Imprisonment for 20 years and to pay a fine of Rs.50,000/-, in default, to undergo Simple Imprisonment for 1 year for the offence under Section 6 of Protection of Child from Sexual Offences Act, 2012, and that the above sentences were ordered to be run concurrently. Aggrieved by the said judgment of conviction and sentence, the accused has come forward with the present Criminal Appeal along with the above miscellaneous petition for suspension of sentence.

6. The learned counsel appearing for the petitioner would contend that except P.W.1 and P.W.2, all other witnesses are hearsay witnesses, that the trial Court has come to the decision only on the basis of the evidences adduced by P.W.1 and P.W.2, who are interested witnesses and the same are highly doubtful, as there existed previous enmity between them and that the petitioner's family members and the defacto complainant's family members had previously money dispute between them.



7. The learned counsel appearing for the petitioner further submit that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses. He would further submit that the petitioner has already paid fine amount.

8. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the trial Judge has specifically observed that the sole testimony of the victim, which inspires confidence and the evidence of circumstances give credence of her veracity and that the prosecution has succeeded in proving the guilt of the petitioner for the offences under Section 366 IPC and Section 6 of Protection of Child from Sexual Offences Act, 2012. He would further submit that the victim girl was aged 14 years at the time of the alleged occurrence and that since the petitioner had committed aggravated penetrative sexual assault on the victim girl more than once, he is not entitled to get any relief in the present petition. He would further submit that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

9. Considering the above facts and circumstances of the case and also the seriousness and gravity of the offence allegedly proved against the petitioner and taking note of the findings recorded by the trial Judge and also taking note of the fact that the petitioner is in incarceration from the date of judgment i.e., 21.01.2022, this Court is not inclined to suspend the sentence imposed on the petitioner.

10. In the result, this Criminal Miscellaneous Petition is dismissed.

sd/-
13/03/2023

/ TRUE COPY /

/03/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CSM

TO

1 THE ADDITIONAL SESSIONS JUDGE,
(FAST TRACK MAHILA COURT),
KARUR DISTRICT.

2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
KARUR DISTRICT.

<https://www.mhca.org.in/>



CRL MP(MD)



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

+1 CC to M/s.T.LAJAPATHI ROY, Advocate SR-4143[I] dated 14/03/2023

WEB COPY

ORDER

IN

CRL MP (MD) No.2702 of 2023

IN

CRL A (MD) No.122 of 2022

Date :13/03/2023

NA/SBN/SAR-3/20.03.2023/4P/5C