



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

Tuesday, the Twenty Eighth day of March Two Thousand and
Twenty Three

WEB COPY

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

Crl.M.P(MD)No.4687 of 2023
in
Crl.A. (MD)No.351 of 2022

V.BALAMURUGAN

... PETITIONER / RESPONDENT /
ACCUSED

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
THILAGARTHEDAL POLICE STATION, MADURAI CITY
(CRIME NO.229 OF 2013)

... RESPONDENT / PETITIONER /
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 passed in SC.No.260/2016, on the file of the learned Sessions Judge, Mahalir Neethimandram, Madurai dt.6/4/2022 and enlarge the petitioner on bail till the pending disposal of Crl.A.

Prayer in CRL.A.(MD).No.351 of 2022:

To call for the records pertaining to Sessions Case No.260 of 2016 on the file of the learned Sessions Judge, Mahalir Neethimandram, madurai and to set aside the order of conviction passed in S.C.No.260 of 2016 dated 06.04.2022 and acquit the appellant/accused from all the charges.

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.ARUMUGAM C M, Advocate for the petitioner and of M/S.SS.MADHAVAN, Government Advocate(Crl.side) on behalf of the Respondent the court made the following order:-

RESERVED ON	21.03.2023
PRONOUNCED ON	28.03.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Mahalir Neethimandram, Madurai, in S.C.No.260 of 2016, dated 06.04.2022, till the disposal of this Criminal Appeal.

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



2. The case of the prosecution is that the de-facto complainant and her daughter were waiting at Madurai Railway Station on 12.03.2013 at about 09.00 p.m., that the petitioner/accused came to that place and had a conversation with them, that at about 10.00 p.m., when the de-facto complainant was sleeping in the floor, the petitioner had kidnapped the de-facto complainant's daughter and brought her to the place near Chappani Temple near Arulmighu Meenakshi Amman temple and he committed rape on the de-facto complainant's daughter, who is mentally unsound, that at about 04.00 a.m., on 13.03.2013, the victim came to the place of her mother, that both of them travelled in the train from Madurai to Tenkasi and during travel, the de-facto complainant noticed that her daughter was in a tired position and there was bleeding, that the de-facto complainant along with her daughter got down at Thirumangalam and went to Government Hospital, that on the basis of the intimation given by the hospital, the respondent police went to the hospital and that on the basis of the complaint lodged by the de-facto complainant, FIR came to be registered in Crime No.229 of 2013 for the offences under Sections 366 and 376 IPC. The respondent, after completing the investigation, has laid the final report against the petitioner on 06.05.2013 and the case was taken on file in P.R.C.No.53 of 2013 on the file of the learned Judicial Magistrate No.II, Madurai. Subsequently, the case was committed to the Principal District and Sessions Judge, Madurai and the case was taken on file in S.C.No.260 of 2016 and subsequently, the case was made over to the learned Sessions Judge, Mahalir Neethimandram, Madurai.

3. During trial, the prosecution has examined 17 witnesses as P.W.1 to P.W.17, exhibited 20 documents as Ex.P1 to Ex.P20 and marked 5 material objects as P.M.O.1 to P.M.O.5. The defence has adduced neither oral nor documentary evidence.

4. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the impugned Judgment, dated 06.04.2022 and convicted the petitioner for the offences under Sections 366 and 376 IPC and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.10,000/- for each offence, in default to undergo six months Simple Imprisonment for each offence. Aggrieved by the said Judgment of conviction and sentence, the accused has preferred the present appeal along with the above Miscellaneous Petition seeking suspension of sentence.

5. No doubt, the petitioner's earlier applications for suspension of sentence in Crl.M.P.(MD)Nos.6134 and 11451 of 2022 in Crl.A.(MD)No.351 of 2022 were ordered to be dismissed by this Court vide orders dated 22.08.2022 and 28.11.2022 respectively



6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondent.

7. The learned counsel appearing for the petitioner would submit that the trial Court did not come forward to examine or interrogate the victim, instead the trial Court has relied on the statement of P.W.1 and on that basis, the conviction was recorded, that the case on hand is highly doubtful and that the prosecution has miserably failed to prove the charges levelled against the petitioner.

8. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the victim girl was a mentally unsound girl, that the medical officer, who examined the victim girl, has given his opinion that she was suffering from Psychosis and that therefore the victim girl could not be examined.

9. As rightly contended by the learned Government Advocate (Criminal Side), considering the medical evidence available and also taking note of the fact that the victim girl was suffering from Psychosis, the non-examination of the victim girl by the investigating officer and before the trial Court cannot be found fault with.

10. As rightly pointed out by the learned Government Advocate (Criminal Side), the trial Court, by relying on the evidence of P.W.1, P.W.6, P.W.10 and P.W.11, has come to the decision that the charges levelled against the petitioner stood proved.

11. The learned Government Advocate (Criminal Side) appearing for the respondent would further submit that the victim girl was admitted in the hospital with bleeding in her private part, that the petitioner was also identified by the auto driver and that the prosecution has produced ample evidence to prove the guilt of the petitioner.

12. Considering the above facts and circumstances and also the nature and gravity of the offence allegedly proved against the petitioner and the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner at this point of time.

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

sd/-

28/03/2023

/ TRUE COPY /

/04/2023

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



TO

1 THE SESSIONS JUDGE, MAHALIR NEETHIMANDRAM, MADURAI.

2 THE INSPECTOR OF POLICE
THILAGARTHEDAL POLICE STATION, MADURAI CITY

3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

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

ORDER

IN

Crl.M.P (MD) No.4687 of 2023
in

Crl.A. (MD) No.351 of 2022

Date :28/03/2023

RK/VR/SAR-1 (03/04/2023) 4P/5C