



CRL MP(MD) No.4268 of 2023

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

Wednesday, the Eighteenth day of October Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice M.SUNDAR
and
The Hon`ble Mrs.Justice R. KALAIMATHI

CRL MP(MD) No.4268 of 2023
in
CRL A(MD)No.194 of 2023

VEERAMANI
NOW CONFINED AT CENTRAL PRISON,
TRICHY ... PETITIONER/PETITIONER/SOLE ACCUSED

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
PUDUKOTTAI ALL WOMEN POLICE STATION,
PUDUKKOTTAI DISTRICT.
(CRIME NO.25/2021). ... RESPONDENT/RESPONDENT/COMPLAINANT

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to enlarge the petitioner on bail by suspending the sentence imposed by the Mahila Court, Pudukottai in Spl.SC.No.18/2022 vide Judgement dated 15/2/2023.

PRAYER in CRL A(MD)No.194 of 2023:

To call for the entire records pertaining to the judgment rendered by the Mahila Court, Pudukkottai in Special S.C.No.18 of 2022 vide judgment dated 15.02.2023 convicting the appellant under section 6(1) of POCSO Amendment Act



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and sentenced him to undergo ligo imprisonment and to pay a fine of Rs.200000/- and in default undergo 1-year R.I and under Section 363 of I.P.C sentenced him to undergo 7 Years R.I and to pay a fine of Rs.20000/- and in default undergo 1-year R.I, and set aside the same and consequently acquit the appellant Honourably.

Order : This Criminal Miscellaneous Petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.PITCHAI MUTHU M, Advocate for the petitioner and of Mr.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-

Reserved on : 05.10.2023

Pronounced on : 18.10.2023

[Order of the Court was made by **R.KALAIMATHI,J.**]

The sole accused in Special S.C.No.18 of 2022 on the file of Mahila Court, Pudukottai has filed this Criminal Miscellaneous Petition with the prayer to enlarge him on bail by suspending the sentence imposed by the Court mentioned supra under Section 389(1) of Cr.P.C.

2. The case of the prosecution in brief:

The petitioner is the sole accused in Special S.C.No.18 of 2022 (CNR.No.TNPD0700031 - 2022) on the file of Mahila Court, Pudukottai. The case of the prosecution is that the fourth daughter of the complainant viz., the victim girl had been pursuing her first year B.A., degree in the Government Arts and Science College, Karambakudi and that the accused had been residing near her house; that



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the accused had been moving closely with the victim girl; fell in love with her; at the instance of the accused, the victim girl went to the house of the accused in order to give him food. He forced her and committed penetrative sexual assault; despite the warning of the complainant, at the instigation of the accused, the victim girl came out of her house; that on 12.11.2021, at about 8.00 a.m., under the guise of going to the College, the accused taken her in a bus to Velanganni and then to Thirupur; that on 14.11.2021, the victim was taken to Thirupur and he took a house for rent and made the victim girl to stay with him; that the accused had repeatedly committed penetrative sexual assault on the victim girl; as a consequence of which, she was pregnant, thereby he was charge sheeted for the offence punishable under Section 366 (A), 5 (l) 5 (j) (ii) r/w. 6(1) of Protection of Children from Sexual Offences Act (POCSO Act).

3. The trial Court, in and by judgment of conviction and sentence dated 15.02.2023, convicted the accused under Section 363 of I.P.C., to undergo 7 years rigorous imprisonment and to pay a fine of Rs.20,000/-, in default, to undergo rigorous imprisonment for one year and under Section 6(l) of POCSO Amendment Act, 2019, to undergo life imprisonment and to pay a fine of Rs.2,00,000/-, in default to undergo rigorous imprisonment for one year and the same is assailed in the criminal appeal.



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4. As per the proviso to Section 374 (2) of Cr.P.C., counter affidavit has been filed by the respondent ie., the Inspector of Police, All Women Police Station, Pudukottai District.

5. Mr.M.Pitchaimuthu, learned counsel appearing for the petitioner would strenuously contend that the victim was examined as P.W.2 and she herself has deposed that on 14.02.2021, at the request of the accused, she went and gave the food at his residence and he was under the influence of alcohol and had intercourse with her. He would further contend that it is the evidence of victim that she went to the residence of the accused with the food and he had sexual intercourse with her many times, which would go to show that it was based on the consent. He would also draw the attention of this Court as to the evidence of the victim viz., P.W.2 that on her own volition only she went along with the accused.

6. Per contra, Mr.P.Meenakshi Sundaram, learned Additional Public Prosecutor appearing for the State would vehemently contend that the victim being a minor girl, the accused had committed penetrative sexual assault on the minor girl / P.W.2 at his residence. Thereafter, he repeatedly committed penetrative sexual



assault at Velangani and Thirupur. It is his further argument that the victim gave a statement before the jurisdictional Magistrate under Section 164 (3) of Cr.P.C. Charges under Section 363 I.P.C., r/w. Section 6(1) of POCSO Act were proved and he was sentenced and convicted as follows:

(a) Under Section 363 I.P.C., by sentencing to undergo 7 years Rigorous Imprisonment along with fine of Rs.2,00,000/- in default to undergo Rigorous Imprisonment of 1 year.

(b) Under Section 6 (1) of POCSO Act, 2012, by sentencing to undergo LIFE Imprisonment along with fine of Rs.20,000/- in default to undergo Rigorous Imprisonment of 1 year.

7. Heard the arguments of Mr.M.Pitchaimuthu, learned counsel for the petitioner and Mr.P.Meenakshi Sundaram, learned Additional Public Prosecutor appearing for the State.

8. At the instance of the father of the victim, F.I.R. came to be registered against the petitioner under Section 366 A of I.P.C. The victim (P.W.2) has stated that she had love affair with the accused and on 14.02.2021, at the request of the accused, she went to his residence with the food and under intoxication, he had sexual



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intercourse with her and this happened repeatedly. It is her further evidence that on 12.11.2021, from Karambakudi she was taken to Velangani, there she was made to stay at a lodge and thereafter taken to Thirupur. P.W.5, Dr.Vimalarani, who is the Medical Officer, has conducted medical examination upon the victim. As per the evidence of P.W.6 / the Principal of the concerned College, the date of birth of the victim is 06.01.2004.

9. It is relevant to refer the observations made by the Hon'ble Supreme Court in *Kashmira Singh vs. State of Punjab* reported in 1977 SCC (Cri.) 559, to the effect that so long as the appellate Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail. If the Court is not in a position to dispose of the appeal within a measurable distance of time, then he may be released on bail in a suitable cases.

10. In *Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi)* reported in 2008 (5) SCC 230, the Hon'ble Apex Court held that during the pendency of appeal, an appellate Court is empowered to suspend the sentence on the appellant by releasing him on bail. Such action, however, can be taken only after affording



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opportunity to the Public Prosecutor in case of offence punishable with death or life imprisonment or imprisonment for ten years or more and after recording reasons in writing.

11. Section 389 of Cr.P.C., is extracted hereunder:

389. Suspension of sentence pending the appeal; release of appellant on bail.

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond:

[Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.]

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.



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(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,-

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail,

order that the convicted person be released on bail unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub- section (1), and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

12. In the appeal, substantial grounds have been raised by the petitioner. The said grounds have to be gone into in detail after hearing the arguments of both sides. It is stated that the petitioner has been in incarceration from 15.02.2023. As there are arguable points and the appeal is likely to take some time, we are of the



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view that the petitioner is entitled to be enlarged on bail by suspending the sentence imposed by the trial Court.

13. Therefore, the Criminal Miscellaneous Petition is allowed and the sentence of imprisonment is suspended and bail is granted to the petitioner on the following conditions:

(i) The petitioner shall execute a bond for a sum of Rs.25,000/- with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the Judicial Magistrate No.I, Pudukottai;

(ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court to obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity; and

(iii) The petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m., until the disposal of the appeal and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 of Cr.P.C. and shall appear before the trial Court on



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any other day in lieu of the date of his absence, as directed by the trial Court.

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18/10/2023

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18/10/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

AKV

TO

- 1 THE JUDICIAL MAGISTRATE NO.I
PUDUKKOTTAI.
- 2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
PUDUKKOTTAI.
- 3 THE JUDGE,
MAHILA COURT, PUDUKKOTTAI.
- 4 THE INSPECTOR OF POLICE
PUDUKOTTAI ALL WOMEN POLICE STATION,
PUDUKKOTTAI DISTRICT.
- 5 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.
- 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.M.PITCHAIMUTHU, Advocate (SR-15396[I] dated 18/10/2023)



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ORDER
IN
CRL MP(MD) No.4268 of 2023
in
CRL A(MD)No.194 of 2023
Date :18/10/2023

SS/DD/18/10/2023/11P/8C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023