



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

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

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

Crl.M.P(MD)No.4486 of 2023

in

Crl.A.(MD)No.332 of 2021

MANIKANDAN

... PETITIONER/APPELLANT

Vs

STATE REP. BY,
THE INSPECTOR OF POLICE,
ALL WOMAN POLICE STATION,
JEEYAPURAM,
TRICHY.
CR.NO.7 OF 2017

... 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 conviction and sentenced ordered by the Learned Special Mahila Court, Tiruchirappalli made in Spl S.C No. 10/2019 dated 01.04.2021 and enlarge the petitioner on bail pending disposal of the above Criminal appeal.

PRAYER IN Crl.A.(MD)No.332 of 2021:-

To Call for the records and set aside the Judgment and Conviction imposed by the learned Sessions Judge, Mahila Court, Tiruchirappalli made in Spl.S.C.No.10 of 2019 dated 10.04.2021 and allow 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 M/S.SOMASUNDARAM E, Advocate for the petitioner and of M/S.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor 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, Mahila Court, Tiruchirappalli, in Spl.S.C.No.10 of 2019, dated 01.04.2021, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that the petitioner/accused is a friend of the cousin brother of the victim girl, that the petitioner approached the minor victim girl with sweet coated words and by giving false promise, he compelled the victim girl and had physical intercourse with her and that in the month of March 2017, the petitioner had taken the minor victim girl to a grove behind the victim girl's house and had sexual intercourse with her several times and as a result of which, the victim girl has become pregnant and it came to the knowledge of her family members and on that basis, FIR came to be registered in Crime No.7 of 2017 for the offences under Sections 5(j)(ii) r/w 6 of Protection of Children from Sexual Offences Act, 2012.

3. The respondent, after completing the investigation, has filed the final report. Meanwhile, the victim girl delivered a male child and the petitioner has refused to marry the victim girl.

4. During trial, the prosecution has examined 16 witnesses as P.W.1 to P.W.16 and exhibited 13 documents as Ex.P.1 to Ex.P.13. The defence has adduced neither oral nor documentary evidence.

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 01.04.2021 finding the petitioner guilty for the offences under Sections 5(j)(ii) r/w 6 of POCSO Act and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo 6 months Simple Imprisonment. 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. No doubt, the petitioner's earlier applications for suspension of sentence in Crl.M.P.(MD)Nos.5495 of 2021 and 9426 of 2022 in Crl.A.(MD)No.332 of 2021 were ordered to be dismissed by this Court vide orders dated 01.04.2022 and 13.09.2022 respectively.

7. The learned counsel appearing for the petitioner would submit that the primary ingredient of age of the victim girl that she is a minor has not at all been established by the prosecution, that the prosecution has miserably failed to produce any evidence or



material to prove the age of the victim girl and that the Court by relying on the DNA report has recorded the conviction, which is very much against the law.

8. The learned counsel appearing for the petitioner would further contend that Rule 12(iii) of Juvenile Justice (Care and Protection of Children) Rules contemplates that the prosecution has to produce matriculation or equivalent certificate to prove the age and in the absence of the same, birth certificate from the school first attended and in the absence the same, birth certificate issued by the Municipal authority or Panchayat concern, but in the present case, no such document was produced by the prosecution.

9. The learned Additional Public Prosecutor appearing for the respondent would submit that the victim girl was born on 30.05.2001 and she was aged about 16 years and not completed 18 years of age and as such, the prosecution has established that the victim girl comes under the category of a child, that the evidence of P.W.1 to P.W.4 would go to show that the victim girl and the petitioner were fallen in love and the petitioner by giving a false promise to marry her had compelled her to have sexual intercourse, that the victim girl has become pregnant, that the DNA report would confirm that the petitioner is the biological father of the child and that the prosecution has proved the charges beyond reasonable doubt.

10. It is the specific case of the prosecution that the date of birth of the victim girl is 30.05.2001 and that she had not completed 18 years of age at the time of the occurrence. It is also their specific case that the DNA report has clearly established that the petitioner is the biological father of the child.

11. 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.

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

sd/-
28/03/2023

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/04/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CSM

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TO

1 SESSIONS JUDGE, MAHILA COURT, TIRUCHIRAPPALLI.

2 THE SUPERINTENDENT OF POLICE,
CENTRAL PRISON,
TRICHY.

3 THE INSPECTOR OF POLICE
ALL WOMAN POLICE STATION,
JEEYAPURAM, TRICHY.

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

ORDER

IN

CRL MP (MD) No.4486 of 2023

IN

CRL A (MD) No.332 of 2021

Date :28/03/2023

NA/VR/SAR-3/03.04.2023/4P/5C