



CRL MP(MD) No.7005 of 2023

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

Friday, the Twenty Second day of December Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.7005 of 2023

in

CRL A(MD) No.362 of 2023

A.SEENIVASAN

... Petitioner / Appellant / Sole Accused

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
DINDIGUL DISTRICT.
(CRIME NO.16/2021).

... 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 suspend the sentence made in SC no.105/2021 on the file of the Fast Track Mahila Judge, Dindigul dated 3/1/2023 and enlarge the petitioner on bail pending disposal of the above appeal on the file of this Honble Court.

Prayer in CRL A(MD) No.362 of 2023:

To call for the records pertaining to the Special Sessions Case No.105 of 2021 on the file of the Fast Track Mahila Judge, Dindigul and set aside the judgment dated 03.01.2023 and acquit the appellant / accused from the charges leveled against him.



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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.S.SARVAGAN PRABHU, Advocate for the petitioner and of Mr.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

Reserved on : 12.12.2023

Pronounced on : 22.12.2023

The petitioner has filed this petition to suspend the sentence imposed against him in judgment dated 03.01.2023 made in Spl.S.C.No.105 of 2021 on the file of the Fast Track Mahila Judge, Dindigul and to enlarge him on bail pending disposal of the Criminal Appeal.

2.The brief facts of the prosecution case:

The victim girl was aged 15 years at the time of occurrence and studying 11th STD. The victim girl was working at Aanantham Fancy Store in Nagal Nagar and the petitioner/accused was working as daily wage labour in the same area. Both developed love affairs and by giving false promises the petitioner took her to his house in Nallampatti on 28.12.2020 and had a forcible sexual relationship with the victim girl and continued the sexual relationship with several times in subsequent days. Thereby the victim became pregnant and gave a child birth on 06.10.2021. The mother of the victim/P.W.1 lodged a complaint before the All Women Police



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Station, Dindugul against the petitioner/accused. FIR was registered in Crime No.16 of 2021 for the offence under Sections 5(l), 5(j)(2) r/w 6 of POCSO Act, 2012 against the petitioner/accused. P.W.11 - Inspector of Police did investigation and laid charge sheet. The petitioner was charged for the offences under sections 363 of IPC and Sections 5(l), 5(j)(2) r/w 6 of POCSO Act, 2012.

3. To prove the charge, the prosecution examined 11 witnesses as P.W.1 to P.W.11 and marked 14 exhibits as Ex.P1 to Ex.P14. No material object was marked. On the defence side no witness was examined and no exhibit was marked. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner/accused guilty for the offence under Section 363 of IPC and sentenced him to undergo rigorous imprisonment for a period of 5 years and to pay a sum of Rs.1,000/-, in default, to undergo simple imprisonment for a period of 2 months and for the offence under Section 6 of POCSO Act sentenced him to undergo rigorous imprisonment for a period of 20 years and to pay a sum of Rs.20,000/-, in default, to undergo simple imprisonment for a period of 6 months by passing impugned judgment dated 03.01.2023.

4. Aggrieved by the conviction judgment, the petitioner/accused has preferred the present Criminal Appeal before this court. Along with appeal, the petitioner/accused has filed this petition seeking for suspension of sentence and for



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bail pending disposal of the appeal.

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5. Heard both sides and perused the records in this Criminal Miscellaneous Petition.

6. The learned counsel for the petitioner has submitted that the petitioner and the victim developed love affairs and they were living together as husband and wife and there was no sexual abuse made by the petitioner against the victim and both had consensual sexual relationship. The complaint was lodged after a long delay and the statement of the victim was recorded after 25 days by the learned Judicial Magistrate and the same was admitted by the victim herself. The trial Court has convicted the accused only based on the evidence of victim girl. The prosecution witnesses are close relatives and so they are to be treated as interested witnesses. P.W.11 – The Investigating Officer herself also admitted that both the petitioner and the victim girl fell in love affairs and were living in relation. The prosecution failed to prove the age of the victim at the time of occurrence. Moreover, the petitioner married the victim girl and they have a child. Both side parents are having good contacts. Subsequent events were admitted by the witnesses. The trial Court has not considered all these aspects and subsequent events. Further, the victim girl and both side parents have also given written statements about the love affairs of the petitioner and victim and their marriage. The petitioner is in prison for the past 11



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months. The petitioner is the only breadwinner of his family and his wife, the victim herein and the child are left to lurch. The petitioner has a fair chance of succeed in appeal. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner. In support of his arguments the learned counsel for the petitioner relied on the citation reported in 2023 (2) TLNJ 400 (Criminal) and the judgment dated 09.05.2022 of the Hon'ble Supreme Court passed in Crl.A.No.796 of 2022.

7. Per contra, the learned Additional Public Prosecutor would submit that the victim girl was aged about 15 years old at the time of alleged occurrence. The victim girl narrated the sexual relationship committed by the accused before P.W.1. The victim as P.W.2 clearly deposed about the commission of forcible sexual relationship by saying false believable words. The DNA test proved that the petitioner is the biological father of the child given birth by the victim. The subsequent compromise and events cannot be entered into the nature of this offence under the POCSO Act. The Doctor's evidence is clear about the sexual relationship with the victim girl. The Trial Judge has properly appreciated the evidence adduced by the prosecution and has correctly passed the judgment convicting the accused as stated therein. On enquiry, it reveals that after the occurrence, the petitioner married the victim girl and they were living happily. The statement of the victim and other witnesses



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recorded on 01.12.2023 by the respondent police have also been submitted and hence this Court may pass suitable orders.

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8. On hearing both side rival arguments and on perusal of records, it is clear that the petitioner was convicted and sentenced to imprisonment as stated supra. During the course of argument, the learned counsel for the petitioner has drawn the attention of the Court to certain grounds of defence that the petitioner and victim fell in love affairs and they lived as husband and wife and there was no commission of any offence as alleged by the prosecution. The petitioner married the victim girl. The victim girl gave a statement dated 01.12.2023 about the subsequent events and also both side parents gave statements. The victim was present before this Court on 12.12.2023 and the respondent police also identified the victim. Their statements show that the petitioner/accused and the victim lead to happy life. The Hon'ble Supreme Court also held that the Court cannot shut its eyes to the ground reality and disturb the happy family life of the appellant and the prosecutrix and the same was followed by this Court in 2023(2) TLNJ 400 (Criminal) as contended by the petitioner's counsel. However, these are to be decided while deciding the appeal on merits. However, the learned counsel for the petitioner pointed out certain infirmities and inconsistencies in this case and also certain admissions in respect of maintaining the petitioner upon the victim girl as he married her. The fact remains



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that there are arguable points involved in this criminal appeal and further the criminal appeal is of the year 2023 and the same is not likely to be taken up for final hearing in the near future and that the petitioner/appellant, admittedly husband of the victim and they had a child, is in prison for the past 11 months. In the above circumstances, this Court is inclined to consider the relief sought in this petition and holds that the petitioner herein is entitled to the relief of grant of suspension of sentence.

9. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal on the following conditions:-

(i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Fast Track Mahila Court, Dindigul;

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

(iii) The petitioner/Accused shall appear before the trial



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Court once in a month i.e., on the first working day of every

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English calendar month at 10.30 a.m., until further orders.

sd/-
22/12/2023

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22/12/2023

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

VSD

To

1.The Sessions Judge,
Fast Track Mahila Court, Dindigul.

2.The Inspector of Police,
All Women Police Station,
Dindigul District.

3.The Superintendent,
Central Prison, Madurai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC to M/s.S.SARVAGAN PRABHU, Advocate, SR.No.58578(F), dated 22.12.2023

ORDER

IN

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in

CRL A(MD) No.362 of 2023

Date :22/12/2023



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ED/ /SAR- (22/12/2023) 9P / 6C

Madurai Bench of Madras High Court is issuing certified copies in this format from
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