



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

Monday, the Twenty Fourth day of April Two Thousand and Twenty
Three

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PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

Crl.M.P(MD)No.5634 of 2023
in
Crl.A.(MD)No.400 of 2022

SEKAR

(NOW CONFINED AT CENTRAL PRISON,
MADURAI)

... PETITIONER/APPELLANT

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
SILAIMAN CIRCLE,
KARUPPAYURANI POLICE STATION,
MADURAI DISTRICT.
(CRIME NO.192/2010).

... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to grant an order of suspension of sentence imposed in the Conviction Judgement passed in Sessions Case No.347 of 2013 on the file of the Learned Sessions Juge, Mahalir Neethimandram, Madurai dt.25/5/2022 and enlarge the petitioner/appellant/Accused No.2 on bail, pending disposal of the Criminal Appeal.

PRAYER IN Crl.A.(MD)No.400 of 2022:-

To call for the records relating to Sessions Case No.347 of 2013 on the file of the Learned Sessions Juge, Mahalir Neethimandram, Madurai dt.25/5/2022 and set aside the same in so far as the Appellant/Accused No.2 and to acquit the Appellant/Accused No.2 by allowing the present 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.VEERANASAMY S, Advocate for the petitioner and of M/S.SIVAKUMAR R, Government Advocate (Crl. Side) on behalf of the Respondent, the court made the following order:-



RESERVED ON	17.04.2023
PRONOUNCED ON	24.04.2023

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This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner/second accused by the learned Sessions Judge, Mahalir Neethimandram, Madurai, in S.C.No.347 of 2013, dated 25.05.2022, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that the defacto complainant's daughter aged about 24 years, was a partially mentally challenged person and she was taking training at Special Training Institute at Shenoy Nagar, Madurai, that as usual on 23.03.2010 at about 05.30 p.m., when she was proceeding to her house by walking, the first accused, who was residing in the opposite house of the defacto complainant, picked up her in his bicycle near Kani Store, Maruthapandiar Street as if he will drop her in the house, taken her to a remote area at Jubilee Town near Vandiyur, where the first accused and the petitioner/second accused had sexually assaulted her again and again, that the victim girl was brought to the defacto complainant by passersby seeing the ID card, that there was heavy bleeding to the victim girl and she fell ill and that on information given by her, complaint was lodged and on that basis, FIR came to be registered in Crime No.192 of 2010 for the offences under Sections 366 and 376 IPC against one named person and three unnamed persons.

3. The respondent police, after completing the investigation, has filed the final report for the offences under Sections 120(b), 376, 366 r/w 34 IPC as against the petitioner and the case was taken on file in S.C.No.37 of 2013 on the file of the learned Sessions Judge, Mahalir Neethimandram, Madurai.

4. During trial, the prosecution has examined 14 witnesses as P.W.1 to P.W.14, exhibited 20 documents as Ex.P.1 to Ex.P.20 and marked 7 material objects as P.M.O.1 to P.M.O.7. The defence have 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 25.05.2022 convicting the petitioner for the offences under Sections 120-B, 366 r/w 34, 376 IPC and sentenced him to undergo 10 years Rigorous Imprisonment for each offence and to pay a fine of Rs.1,000/- for each offence, in default, to undergo 1 year Simple Imprisonment for each offence and that the above sentences were ordered to be run concurrently. Aggrieved by the said judgment of conviction and sentence, the second accused has come forward with the present Criminal Appeal.



6. The learned counsel appearing for the petitioner would submit that the petitioner is a washer man by profession and his health condition has been deteriorating every day in the prison and suffering severe ailments, that the petitioner has been falsely implicated in the above case without any iota of evidence, that the victim girl before ever adducing evidence before the trial Court had passed away, that the allegation of rape cannot be proved without examining the victim girl, that the trial Court ought to have rejected the case of the prosecution as there was no substantive evidence to prove the occurrence, that the evidence of P.W.1 and P.W.2, the parents of the victim girl and their evidence is only hearsay, that the victim girl was present in the police station at the time of preferring the complaint, but no statement was taken from her, that the evidence of P.W.3, P.W.4 and P.W.9 have not supported the case of the prosecution, but the trial Court had erroneously believed their evidence and convicted the petitioner and that though the petitioner's name does not find place in the FIR, he has been subsequently implicated in the above case.

7. No doubt, the petitioner's earlier two applications were ordered to be dismissed, lastly, vide order dated 26.10.2022.

8. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the trial Court has rightly believed the evidence of P.W.3, P.W.4 and P.W.9 and convicted the accused including the present petitioner.

9. As rightly contended by the learned Government Advocate (Criminal Side), all the points/aspects now canvassed by the learned counsel appearing for the petitioner are matter for consideration in the main appeal.

10. Considering the nature and gravity of the offences 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.

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

sd/-
24/04/2023

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/05/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CSM

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TO

1 THE SESSIONS JUGE, MAHALIR NEETHIMANDRAM, MADURAI.

2 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
SILAIMAN CIRCLE,
KARUPPAYURANI POLICE STATION,
MADURAI DISTRICT.

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

ORDER

IN

CRL MP (MD) No.5634 of 2023

IN

CRL A (MD) No.400 of 2023

Date :24/04/2023

NA/VR/SAR-II/16.05.2023/4P/5C