



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

Tuesday, the Twenty Fifth day of April Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.5683 of 2023
in
CRL A(MD)No. 396 of 2021

MURUGAN
(NOW CONFINED AS CONVICT PRISONER
IN MADURAI CENTRAL PRISON)

...APPELLANT/SOLE ACCUSED

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
DINDIGUL,
DINDIGUL DISTRICT.
CR.NO.13/2018

... RESPONDENT/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 imposed against the petitioner and release on bail pending disposal of he main criminal Appeal before this Honourable Court against the judgment of the Honourable Sessions Judge Fast Track Mahila Court Dindigul in Special SC No.49 of 2018 dated 05.05.2021.

PRAYER IN CRL A(MD)No. 396 of 2021:

Pleased to call for the entire records connected with the judgment rendered by the Hon'ble Sessions Judge, Fast Track Mahila Court, Dindigul in Special S.C.No. 49 of 2018 daed 05.05.2021 and set aside the same and consequently acquit the appellant.

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.PRAKASH R, Advocate for the petitioner and of MR.R.SIVAKUMAR, Government Advocate (Criminal Side) on behalf of the Respondent, the court made the following order:-

Reserved on : 18.04.2023

Delivered on : 25.04.2023

The Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the learned Sessions Judge, Fast Track



Mahila Court, Dindigul in Spl.S.C.No.49 of 2018, dated 05.05.2021, and enlarge the petitioner on bail, pending disposal of the appeal.

2. The case of the prosecution is that on 02.09.2018 at about 05.30 p.m., when the victim girl went to the grocery shop and while she was returning to her house by crossing the railway gate, the petitioner/accused called the victim girl, then he forcibly pulled the victim girl into his hut, that the petitioner had then committed aggravated penetrative sexual assault against the victim girl, that the petitioner threatened the victim girl that he will done away her father and brother if she discloses the occurrence to anyone and that again on 03.09.2018 at about 05.30 p.m., when the victim girl was returning to her house from her school, the petitioner pulled her to his hut and committed aggravated penetrative sexual assault.

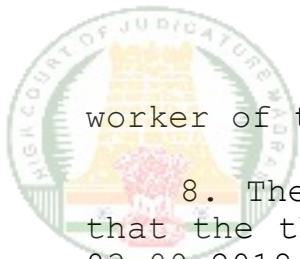
3. The respondent police registered a case in Crime No.13 of 2018 for the offences under Sections 5(1)(m) r/w 6 of POCSO Act. After completing the investigation, the respondent Police has filed charge sheet against the petitioner/accused for the offences under Sections 5(1)(m) r/w 6 of POCSO Act.

4. During the trial, the prosecution has examined 18 witnesses as P.W.1 to P.W.18 and exhibited 11 documents as Ex.P.1 to Ex.P.11. The defence has adduced neither oral nor documentary evidence.

5. The learned Sessions Judge, upon considering the evidence adduced and on hearing the arguments of both the sides, has passed the impugned judgment dated 05.05.2021 convicting the petitioner/accused for the offence under Sections 5(1)(m) r/w 6 of Protection of Children from Sexual Offences Act, 2012, and sentenced him to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months Simple Imprisonment and for the offence under Section 506(1) IPC, sentenced him to undergo one year Rigorous Imprisonment and that the above sentences were ordered to be run concurrently. Aggrieved by the said judgment of conviction and sentence, the petitioner has preferred the present Criminal Appeal.

6. No doubt, the petitioner's earlier four applications seeking suspension of sentence were dismissed by this Court, lastly vide order dated 09.01.2023.

7. The learned counsel for the petitioner would submit that the evidence of prosecution adduced, is not at all sufficient to prove the prosecution case, that Ex.P.2-complaint is not a genuine one and the same was fabricated and accordingly, original complaint was suppressed, that the witnesses P.W.5 and P.W.6 had turned hostile and P.W.2, P.W.3 and P.W.7 to P.W.11 were only hearsay witnesses and that P.W.1 in cross examination would admit that the alleged occurrence had happened in the presence of gate keeper, but the



worker of the petitioner/accused.

8. The learned counsel for the petitioner would further submit that though the alleged incident was occurred on 02.09.2018 and 03.09.2018, FIR came to be registered on 09.09.2018 and that the prosecution has not offered any reason or explanation for the long delay in registering the FIR and sending the same to the Magistrate Court; that the medical evidence did not support the case of the prosecution; that P.W.1 would say that P.W.3 and his family members had brutally attacked the petitioner/accused and as a result of which, he sustained grievous injuries that he gave a complaint before the Thadikombu Police Station on 04.09.2018 and he was admitted as in-patient in Government Hospital, Dindigul and that on 09.09.2018 P.W.2 gave a complaint and on that basis, case in counter came to be registered. He would further submit that the prosecution has miserably failed to prove the age of the victim.

9. The learned Government Advocate (Criminal Side) appearing for the State would submit that the trial Court, upon considering the School certificate and the other evidence adduced, has rightly come to a decision that the prosecution has proved that the victim girl was born on 03.10.2006 and she was below 12 years at the time of alleged occurrence. He would further submit that the trial Court, by relying on the evidence of P.W.1 to P.W.4, P.W.7 to P.W.18 and by holding that the evidence of the victim girl is reliable and trustworthy, has specifically decided that the charges levelled against the petitioner were proved.

10. Considering seriousness and gravity of the offence allegedly proved against the petitioner and taking note of the age of the victim girl and the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner.

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

sd/-

25/04/2023

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/05/2023

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

DAS

TO

1 THE SESSIONS JUDGE,
FAST TRACK MAHILA COURT, DINDIGUL.

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



- 2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
DINDIGUL, DINDIGUL DISTRICT.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

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ORDER
IN
CRL MP(MD) No.5683 of 2023
in
CRL A(MD)No. 396 of 2021
Date :25/04/2023

PKP/MMS/SAR-2/17.05.2023/ **4P/5C**