



CRL MP(MD) No.6528 of 2023

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

Wednesday, the Twentieth day of December Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.6528 of 2023

in

CRL A(MD) No.49 of 2023

C.ALAGURAJ

... Appellant / Accused

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
VILLATHIKULAM POLICE STATION.
(CRIME NO.9/2015).

... 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 execution of sentence passed by the Fast Track Mahila Court, Thoothukudi dated 30/11/2022 made in SC.No.39/2017 and to order to release the petitioner/appellant/accused on bail pending disposal of the appeal.

Prayer in CRL A(MD) No.49 of 2023:

To call for the records relating to the judgment dated 30.11.2022 made in S.C.No.39 of 2017 on the file of Court of Fast Mahila Court, Thoothukudi the order of conviction and set aside the same as illegal and allow the above appeal.

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.MOHAMED MOHIDEEN T S, Advocate for the appellant and of Mr.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent,



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the court made the following order:-

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Reserved on : 28.11.2023

Pronounced on : 20.12.2023

The petitioner has filed this Criminal Miscellaneous Petition to suspend the execution of the sentence imposed against him in S.C.No.39 of 2017 on the file of the Fast Track Mahila Court, Thoothukudi dated 30.11.2022 and to release him on bail pending disposal of Criminal Appeal.

2.The brief facts of the prosecution case:

The petitioner developed contacts with the victim/P.W.1 for the past three years by saying he would marry her and six months prior to the complaint, the petitioner/accused came to the house of the victim and had forcibly sexual relationship with the victim girl under false promise to marry her. Thereafter, the petitioner had frequent sexual relationship with her. One month prior to complaint, the petitioner came to the house of the victim and refused to marry her. The victim got pregnancy of five months and lodged a complaint before the All Women Police Station, Vilathikulam. The respondent police registered the FIR in Crime No.9 of 2015 for the offence under Sections 417 and 376 of IPC against the petitioner. P.W.15 - Inspector of Police did investigation and laid charge sheet. The petitioner was charged for the offence under Sections 450, 417, 376 and 506(i) of IPC.



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3. To prove the charge, the prosecution examined 15 witnesses as P.W.1 to P.W.15 and marked 26 exhibits as Ex.P1 to Ex.P26. No MO was marked. The petitioner/accused has examined three witnesses and not marked any document. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner/accused guilty for the offence under Sections 417 and 376 of IPC and convicted and sentenced him to undergo Simple Imprisonment for a period of one year and to pay a fine of Rs.1000/-, in default, to undergo Simple Impriosnment for a period of one month for the offence under Section 417 of IPC and to undergo Rigorous Imprisonment for a period of 10 years and to pay a fine of Rs.3,000/-, in default, to undergo Simple Imprisonment for a period of 3 months for the offence under Section 376 of IPC and the petitioner found not guilty for the offence under Sections 450 and 506(i) of IPC and acquitted him by passing impugned judgment dated 30.11.2022.

4. Aggrieved by the conviction judgment, the 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 bail pending disposal of appeal.

5. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.



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6.The learned counsel for the petitioner has submitted that this is the second petition and already the petitioner filed CrI.M.P.(MD) No.572 of 2023 and the same was dismissed on 23.01.2023 considering short period of incarceration. The victim girl is major and she is 23 years old. The petitioner and the victim girl developed love affair with each other. Both have consensual sexual relationships even in the year 2012 three years prior to the complaint. The victim girl never refused or objected the sexual relationship. P.W.1 clearly admitted these facts in her cross examination. The complaint was given after lapse of 3 years and the prosecution did not explain the reason for the delay. The charge for the offence under Section 376 of IPC would not attract against the petitioner. The petitioner never committed any crime under false promise. Further, the DNA test report is not a criteria for convicting the accused and the DNA test report is only to prove the biological father of the child. The Trial Court has misconstrued the settled propositions of law and convicted the petitioner. The petitioner has a fair chance of succeed in the appeal. The petitioner is in prison for more than one year including the remand period. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner.

7. Per contra, the learned Additional Public Prosecutor appearing for the respondent has contended that the Trial Judge has elaborately discussed the



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contentions of the petitioner along with the oral and documentary evidence adduced by the prosecution and come to the conclusion that the petitioner compelled and forced the victim/PW1 to have a physical sexual relationship by making her believe that he would marry her and thereby she became pregnant and gave childbirth and that DNA test report proved the petitioner as the biological father of that child and therefore, found guilty of a charge under Section 376 of IPC. The petitioner/accused married another girl. The allegation of consensual sexual relationship is the matter of argument. The earlier petition was dismissed by this Court on 23.01.2023. The period of incarceration is immaterial. Duty of the Court to deal with cases involving sexual molestation with utmost sensitivity. The gravity of offence committed by the petitioner has to be looked in this case. Therefore, he strongly opposed to grant suspension of sentence and thereby the petitioner is not entitled to bail.

8. On hearing both side rival arguments and on perusal of records, it is clear that the petitioner and the prosecutrix/PW1 are majors and they developed love affairs three years prior to the complaint. The petitioner is now a married man. On perusal of the evidence of P.W.1 who would admit in her cross-examination that both had sexual relationships several times and she never refused when the petitioner had a physical sexual relationship. Further perusal of the evidence of



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P.W.1, it is clear that she went to the hospital to abort the fetus and the same was failed, then she lodged a complaint. 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 admission in respect of love and affection of the petitioner upon the victim girl. The fact remains that there are arguable points involved in this criminal appeal as stated supra and further the criminal appeal is not likely to be taken up for final hearing in the near future and that the petitioner/appellant is in prison for more than one year. 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, Thoothukudi;

(ii) The sureties shall affix their photographs and Left Thumb



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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 shall appear before the trial Court on first working day of every week at 10.30 a.m., until further orders.

sd/-
20/12/2023

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20/12/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

VSD

To

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

2.The Inspector of Police,
All Women Police Station,
Vilathikulam Police Station.

3.The Superintendent,
Central Prison, Palayamkottai.

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

+1 CC to M/s.T.S.MOHAMED MOHIDHEEN, Advocate (SR-18084[I] dated 20/12/2023)



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ORDER

IN

CRL MP(MD) No.6528 of 2023

in

CRL A(MD) No.49 of 2023

Date :20/12/2023

ED/ /SAR- (15/12/2023) 8P / 6C

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