



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

Friday, the Twenty Third day of June Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.7755 of 2023
IN
CRL A(MD) No.425 of 2023

ANANDAKUMAR

... PETITIONER/APPELLANT

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
ERIODU POLICE STATION,
DINDIGUL DISTRICT.
CRIME NO.579 OF 2021.

... 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 Sentence imposed on Petitioner by the Learned Fast Track Mahila Court, Dindigul in Spl.SC.No.97 of 2021 dt.17.11.2022 and enlarge the Petitioner on bail pending disposal of the Criminal Appeal.

PRAYER IN CRL.A(MD) No.425/2023:

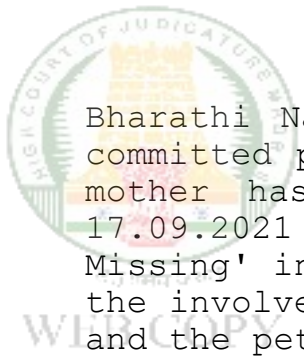
Pleased to call for the records and set aside the judgment dated 17.11.2022 made in Spl.S.C.No.97 of 2021 on the file of the Learned Fast Track Mahila Court, Dindigul.

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.HAROON RASHEED D.S., Advocate for the petitioner and of Mr.SS.MADHAVAN, Government Advocate(crl.side) on behalf of the Respondent, the court made the following order:-

RESERVED ON	20.06.2023
PRONOUNCED ON	23.06.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner/sole accused by the learned Sessions Judge, Fast Track Mahila Court, Dindigul, in Spl.S.C.No.97 of 2021, dated 17.11.2022, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that the petitioner and the victim girl, who is aged 17 years, were loved each other, that on 15.09.2021, the petitioner by giving false promise had kidnapped the victim girl to Tirupur and they stayed at Kavitha compound upstairs,



Bharathi Nagar, Chandrapuram and at that time, the petitioner had committed penetrative sexual assault on her, that the victim girl's mother has lodged a complaint before the respondent police on 17.09.2021 and on that basis, FIR came to be registered as 'Girl Missing' in Crime No.579 of 2021 and that after coming to know about the involvement of the petitioner and after securing the victim girl and the petitioner, the case was altered into for the offences under Section 363 IPC and Sections 5(1) r/w 6 of POCSO Act.

3. The respondent police, after completing the investigation, has filed the final report for the offences under Section 363 IPC and Sections 5(1) r/w 6 of POCSO Act and the case was taken on file in Spl.S.C.No.97 of 2021 and the same was pending on the file of the Fast Track Mahila Court, Dindigul.

4. During trial, the prosecution has examined 15 witnesses as P.W.1 to P.W.15 and exhibited 18 documents as Ex.P.1 to Ex.P.18. 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 21.03.2023 convicting the petitioner for the offences under Section 363 IPC and Section 6 of POCSO Act and sentenced him to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo 6 months Simple Imprisonment for the offence under Section 363 IPC and to undergo 20 years Rigorous Imprisonment and to pay a fine of Rs.20,000/-, in default, to undergo 6 months Simple Imprisonment for the offence under Section 6 of POCSO Act and that the above sentences were ordered to be run concurrently. Aggrieved by the said judgment of conviction and sentence, the accused has come forward with the present Criminal Appeal along with the above application for suspension of sentence.

6. The learned counsel appearing for the petitioner would submit that the prosecution has miserably failed to prove the age of the victim girl, that the investigating officer has produced the xerox copy of the transfer certificate and mark statement of the victim girl before the trial Court at later point of time and the same were not exhibited, that P.W.13-Doctor attached to the Micro Radiation Department has given a certificate that the age of the victim girl is above the age of 18 and below the age of 21 and that therefore, the question of invoking the provision of POCSO Act does not arise at all.

7. The learned counsel appearing for the petitioner would further submit that P.W.2 in her evidence would say that the petitioner and the victim girl loved each other for the past 4 years, that the love affairs came to the knowledge of the victim girl's brother, that thereafter, both of them went to Tirupur on 15.09.2021, that the house owner Kavitha was not at all examined as



witness before the trial Court and there was no evidence that both of them were residing at Tirupur, that the victim girl was allegedly found missing on 15.09.2021 and the complaint was lodged on 17.09.2021 and the prosecution has not offered any reason or explanation for the delay in lodging the complaint, that P.W.2 in her evidence would say that since the petitioner and the victim girl are worshipping the same God, there existed relationship of brother and sister, that the witnesses P.W.3, P.W.4 and P.W.6 had turned hostile, that P.W.5 is only a hearsay witness and that the trial Court, without considering the above material aspects, has mechanically recorded the conviction.

8. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the grounds raised by the learned counsel appearing for the petitioner such as vengeance, delay in FIR, consent and presumptions were rightly considered and decided by the trial Court, that the delay in lodging the complaint was properly explained, that the radiation report cannot be considered as a conclusive proof for determining the age of the victim girl, that the issue with regard to the age was rightly dealt with by the trial Court and came to the decision that she has not completed 18 years of age and as such, she can only be considered as a child under Section 2(d) of POCSO Act and that the learned trial Judge, upon considering the evidence available on record, has rightly convicted the petitioner.

9. It is pertinent to note that the impugned judgment was passed only on 17.11.2022 and the petitioner was imposed with maximum punishment of 20 years Rigorous Imprisonment.

10. As rightly contended by the learned Government Advocate (Criminal Side), the points and the aspects now canvassed by the learned counsel appearing for the petitioner are matter for consideration in the main appeal and are not sufficient enough to suspend the sentence at this point of time.

11. Considering the seriousness and gravity of the offence allegedly proved against the petitioner and also the fact that the impugned judgment was passed on 17.11.2022 and the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner.

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

sd/-

23/06/2023

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/07/2023

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



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

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
ERIODU POLICE STATION,
DINDIGUL DISTRICT.

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

ORDER

IN

CRL MP(MD) No.7755 of 2023
IN

CRL A(MD) No.425 of 2023

Date :23/06/2023

SA/VR/SAR. /05.07.2023/4P/5C
SA/SAR. /08.07.2023/4P/C