



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Friday, the Seventh day of July Two Thousand and Twenty Three

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PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP (MD) No.7673 of 2023

in

CRL A (MD) No.410 of 2023

1 K.SURESH KUMAR

2 K.KALIMUTHU @ MARIMUTHU

3 K.BABYAMMAL

4 S.JEYA

5 G.SOMAN

... APPELLANTS/ACCUSED No.1 TO 5

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
GANDAMANUR POLICE STATION,
THENI DISTRICT.
CR.NO.307/2016

... 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 by the judgment dt 19.04.2023 made in Spl.S.C.No.78/2016 on the file of Learned Mahila Fast Track Court Theni and enlarge the petitioner on bail pending disposal of the above appeal.

PRAYER IN CRL A (MD) No.410 of 2023:

To call for the records relating to the judgment dated



Track Court, Theni and set aside the conviction and sentence imposed against the appellants/accused and allow above appeal by acquitting the accused.

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Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.AJMAL KHAN, senior counsel for M/S.AJMAL ASSOCIATES, for the petitioner and of Mr.S.S.MADHAVAN, Government Advocate (Crl.side) on behalf of the Respondent while admitting the CRL A., the Court made the following order:-

RESERVED ON : 30.06.2023
PRONOUNCED ON : 07.07.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioners/accused 1 to 5 by the learned Sessions Judge, Fast Track Mahila Court, Theni, in Spl.S.C.No.78 of 2016, dated 19.04.2023, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that when the parents of the victim girl has rejected the marriage proposal of the first petitioner, the first petitioner with the help of the petitioners 2 and 3, who are the parents of the first petitioner, by using sweet coated words had kidnapped the victim girl, who is aged 17 years, to Pothankadu, Thiruvananthapuram and stayed at the house of the petitioners 4 and 5 and at that time, the first petitioner had tied thali on the victim girl and committed penetrative sexual assault on her, that the victim girl's mother has lodged a complaint before the respondent police on 10.09.2016 and on that basis, FIR came to be registered as 'Girl Missing' in Crime No.307 of 2016 and that after coming to know about the involvement of the petitioners and after securing the victim girl, the case was altered.

3. The respondent police, after completing the investigation, has filed the final report and the case was taken on file in Spl.S.C.No.78 of 2016 and the same was pending on the file of the Fast Track Mahila Court, Theni.

4. During trial, the prosecution has examined 25 witnesses as P.W.1 to P.W.25, exhibited 20 documents as Ex.P.1 to Ex.P.20 and marked 2 material objects as M.O.1 and M.O.2. The defence have adduced neither oral nor documentary evidence.

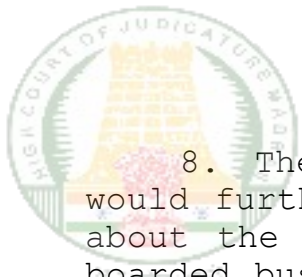
5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 19.04.2023 convicting the petitioners/accused 1 to 5 and sentenced them as follows:-



Accused	Provision under which convicted	Sentence
A1-K.Suresh Kumar	under Section 366 IPC	to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for 2 years
A2-K.Kalimuthu @ Marimuthu	under Section 6 of POCSO Act	to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for 2 years
A3-K.Babyammal	under Section 366(A) IPC	to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for 2 years
A4-S.Jeya	under Section 6 r/w 17 of POCSO Act	to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for 2 years
A5-G.Soman	under Section 6 r/w 17 of POCSO Act	to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for 2 years

6. Aggrieved by the said judgment of conviction and sentence, the accused 1 to 5 have come forward with the present criminal appeal along with the above application for suspension of sentence.

7. The learned Senior Counsel appearing for the petitioners would submit that P.W.1 and the petitioners 1 to 3 are close relatives, that the defacto complainant's daughter-victim girl herein had an unrequited love towards the first petitioner, despite knowing that the first petitioner is a married man and is having kids, that on 08.09.2016, the victim girl came to the house of the first petitioner and compelled him to marry her, otherwise she threatened to commit suicide, that the petitioners 1 to 3 advised her to tell about the same to her parents, but the victim girl informed that if any permission is asked from her parents, they would create problem, that if the first petitioner has not brought to her elsewhere, she would commit suicide and that in that delegate situation, the first petitioner decided to take the victim girl to his cousin sister's house situated at Thiruvananthapuram.



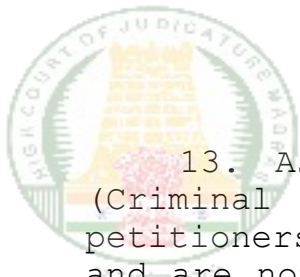
8. The learned Senior Counsel appearing for the petitioners would further submit that the petitioners 2 and 3 had no knowledge about the incident, that the first petitioner and the victim girl boarded bus from Rajapalayam to Tirunelveli and then to Pothankadu, Thiruvananthapuram by car to the house of the petitioners 4 and 5, that both of them had stayed in their house, that the first petitioner has not even touched the victim girl during their stay and that the petitioners 1, 4 and 5, after taking much effort, advised the victim girl to join her parents and accordingly, the first petitioner had taken the victim girl to Gandamanur on 15.09.2016 and due to the night time, she was shifted to child home.

9. It is evident from the records that originally FIR came to be registered in Crime No.307 of 2016 on 10.09.2016 as 'Girl Missing' and subsequently, the case was altered and after completing the investigation, charge sheet came to be filed for the offences under Sections 366 and 366(A) IPC and Sections 5(1) r/w 6 and 17 of POCSO Act.

10. The learned Senior Counsel appearing for the petitioners would submit that the petitioners had never kidnapped the victim girl, the victim girl herself fell in love with the first petitioner and voluntarily left with him, that if the victim girl was kidnapped in the bus, she would have raised hue and cry, but she has not made any alarm or attempted to escape and that the victim girl had deposed that she was transported through bus from Rajapalayam to Tirunelveli. He would further submit that family disputes between the two families were ingeniously played as against the petitioners with the help of the respondent police and that the trial Court has failed to consider the material contradictions of the prosecution witnesses and also the fact that some of the witnesses had turned hostile.

11. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the victim girl has not completed 18 years of age, that the victim girl has given statement under Section 164 Cr.P.C. implicating the involvement of the petitioners and that the victim girl in her evidence before the trial Court has reiterated the same. He would further submit that the first petitioner along with the petitioners 2 and 3 had kidnapped the victim girl, that since the victim girl was a child, the question of taking her with her consent does not arise and that even according to the first petitioner, he had taken the victim girl to Pothankadu, Thiruvananthapuram and stayed there in the house of the petitioners 4 and 5 and according to the victim girl, the first petitioner in the presence of the petitioners 4 and 5 had tied thali and committed penetrative sexual assault for three days.

12. It is pertinent to note that the impugned judgment was passed only on 19.04.2023.



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

14. Considering the seriousness and gravity of the offences allegedly proved against the petitioners and taking note of the fact that the impugned judgment was passed only on 19.04.2023 and the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioners at this point of time.

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

sd/-
07/07/2023

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/07/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CSM

TO

- 1 THE MAHILA FAST TRACK JUDGE,
THENI.
- 2 THE INSPECTOR OF POLICE
GANDAMANUR POLICE STATION, THENI DISTRICT.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-10463[I] dated 11/07/2023)

ORDER
IN
CRL MP (MD) No.7673 of 2023
in
CRL A (MD) No.410 of 2023
Date : 07/07/2023