



CRL.M.P.(MD)No.10282 of 2023

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

Thursday, the Twenty Third day of November Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL.M.P.(MD)No.10282 of 2023

in

CRL.A.(MD)No.564 of 2023

VENKATACHALAM @ VENKATESH

(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,
PALANI,
DINDIGUL DISTRICT.
CRIME NO.28 OF 2019.

... 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 him on bail pending disposal of the main Criminal Appeal before the Honble Court against the Judgment of the Honble Sessions Judge, Fast Track Mahila Court,Dindigul,Spl.SC.No.15 of 2020 dated 05.01.2023.

PRAYER IN CRL.A.(MD)No.564 of 2023:

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.15 of 2020 dated 05.01.2023 and set aside the same and consequently acquit the appellant.



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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 M/S.PRAKASH R, Advocate for the petitioner and of MR.B.NAMBI SELVAN, Additional Public Prosecutor, on behalf of the Respondent, the court made the following order:-

Reserved on : 31.10.2023

Pronounced on : 23.11.2023

The petitioner has filed this petition to suspend the sentence imposed against him and release him on bail pending disposal of the Criminal Appeal against the judgment of Sessions Judge, Fast Track Mahila Court, Dindigul in Spl.S.C.No.15 of 2020, dated 05.01.2023.

2.The brief facts of the prosecution case:

The petitioner/accused is step father of the victim girl, who was aged 14 years at the time of occurrence. On 19.12.2019 when the victim girl was alone in her house and knew the absence of her mother, closed door and forcefully committed aggravated penetrative sexual assault against the victim girl and threatened her with criminal intimidation. The victim narrated the events to her mother, who lodged complaint before the All Women Police Station, Palani against the accused. FIR was registered in Crime No.28 of 2019 under Sections 6 of POCSO Act and 506 (i) of IPC against the petitioner. P.W.10 - Inspector of Police did investigation and laid charge



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sheet against the petitioner. The petitioner was charged for the offences under sections 5 (n) r/w 6 of POCSO Act and 506(i) of IPC.

(i) To prove the charge the prosecution examined 10 witnesses as P.W.1 to P.W.10 and marked 13 exhibits as Ex.P1 to Ex.P13. On the defence side no witness was examined and no exhibit was marked. No M.O was marked. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner/accused guilty under Sections 5(n) r/w 6 of the POCSO Act and convicted and sentenced him to undergo 20 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo Simple Imprisonment for a period of six months and for the offence under Section 506(i) of IPC convicted and sentenced him to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for a period of three months and ordered the sentence of imprisonment to run concurrently by passing impugned judgment dated 05.01.2023.

3. Aggrieved by the conviction judgment, the accused has preferred the present Criminal Appeal before this Court. Along with appeal, the petitioner has filed this petition seeking for suspension of sentence and for bail till the disposal of the appeal.



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4. Heard both sides and perused the records in this Criminal Miscellaneous Petition.

5. The learned counsel for the petitioner has submitted that the victim girl fell in love affairs with another boy and she was warned by this petitioner, so a false case was foisted against the petitioner. This fact was admitted by the victim girl and the defacto complainant in their subsequent evidences. But, the Trial Court has not considered their evidences. The petitioner has not committed any offence as alleged and he is in prison for more 10 months. The petitioner has a fair chance of succeed in appeal. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner.

6. Per contra, the learned Additional Public Prosecutor would submit that the defacto complainant is the mother of the victim girl aged 14 years, who was born through the first husband of the defacto complaint. The petitioner is the second husband. During her absence, the petitioner being the step father of the victim girl forcefully committed penetrative sexual assault on the victim girl and threatened her with dire consequences if she would disclose the same. The defacto complainant and the victim girl as P.W.1 and P.W.2 gave corroborative evidence in their chief



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examination and cross examination. After lapse of more than one year, they were recalled on the petition of petitioner and they gave evidence against their own evidence. Their evidence along with other material evidences have proved the crime committed by the petitioner as concluded by the Trial Court. Doctor's evidence is clear about the sexual assault. The Trial Judge has properly appreciated the evidence adduced by the prosecution and has correctly passed the judgment convicting the petitioner as stated therein. The step father committed offence against her own step daughter, as she born to the defacto complainant through first husband. The petitioner, being step father of the victim girl, is awarded sentence of imprisonment to 20 years and he is in prison only for 10 months.. Therefore, he strongly opposed to grant suspension of sentence and thereby the petitioner is not entitled to bail.

7. On hearing both side rival arguments and on perusal of records, it is clear that the petitioner was convicted and sentenced to imprisonment as stated supra. The petitioner stated that he has not committed any offence. It is the case of the petitioner that the victim girl fell love affairs with another boy and this was warned by the petitioner and hence, this case was falsely registered against the petitioner. It is the further stand of the petitioner that P.W.1 and P.W.2 were recalled and they gave evidence to support the version of the petitioner.



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8. On perusal of records and judgement of the trial Court, it is clear that the chief evidence of the defacto complainant and victim girl as P.W.1 and P.W.2 was cogent and does not suffer from any infirmity. The Trial Court came to conclusion not based on the evidence of P.W.1 and P.W.2 but also based other material including medical evidence. The contention of the learned counsel for the petitioner raised in this petition that the victim had love affair with another boy, which was warned by him and so he was falsely implicated in this case is matter for consideration in the appeal. The petitioner is in jail for short period from 05.01.2023 against total period of sentence of 20 years. Therefore, considering the gravity of the offence and the manner in which, the offence committed by the petitioner, this Court is not inclined to suspend the sentence at this stage and also this is not a fit case to exercise the jurisdiction of suspense of sentence.

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

sd/-
23/11/2023

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/11/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

vsd



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TO
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- 1.THE SESSIONS JUDGE, FAST TRACK MAHILA COURT,DINDIGUL.
- 2.THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 3.THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
PALANI,
DINDIGUL DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL.M.P.(MD)No.10282 of 2023
in
CRL.A.(MD)No.564 of 2023
Date :23/11/2023

RK/DD (28/11/2023) 7P / 5C

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