



CRL MP(MD) No.10012 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.10012 of 2023

in

CRL A(MD)No.52 of 2023

MUTHUMARI ... PETITIONER/ APPELLANT/ SOLE ACCUSED
NOW CONFINED AT (CENTRAL PRISON, MADURAI).

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, MANAMADURAI,
SIVAGANGAI DISTRICT.
(IN CRIME NO.14/2014). ... RESPONDENT/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 sentence imposed on the petitioner vide judgment dated 09.12.2022 made in S.C.No.145 of 2016 on the file of the Fast Track Mahila Court, Sivagangai and enlarged me on bail pending disposal of the above criminal appeal.

PRAYER in CRL A(MD)No.52 of 2023:

To Call for records and set aside the Judgment dated 09.12.2022 made in S.C.No.145 of 2016 on the file of the Fast Track Mahila Court, Sivagangai.

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.MAYILVAHANA RAJENDRAN.C, Advocate for the petitioner and of Mr.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-



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Reserved on : 04.12.2023

Pronounced on : 20.12.2023

The petitioner has filed this petition to suspend the sentence imposed against him in S.C.No.145 of 2016 on the file of the Fast Track Mahila Court, Sivagangai dated 09.12.2022 and enlarge him on bail pending disposal of the Criminal Appeal.

2.The brief facts of the prosecution case:

The petitioner was working as a driver in the bricks chamber of P.W.4 Vanangamudi. The defacto complainant along with husband and children were residing in the bricks chamber of P.W.4 Vanangamudi. The victim girl aged about 20 years is mentally challenged person. On 22.08.2014 she was brought to the hospital as she told severe stomach pain and she was found 8 months pregnant by doctors. Her mother/defacto complainant asked the victim girl who identified the petitioner/accused who had frequent sexual relationships. Then P.W.1 lodged a police complaint. The respondent police registered the FIR in Crime No.14 of 2014 for the offence under Section 376 (2) (1) &(n) of IPC against the petitioner. P.W.22 - Inspector of Police did investigation and laid charge sheet. The learned Trial Judge framed charge against the petitioner for the offence under Section 376 (2) (1) & (n) of IPC.



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3. To prove the charge the prosecution examined 22 witnesses as P.W.1 to P.W.22 and marked 12 exhibits as Ex.P1 to Ex.P12 and marked 4 Material Object as M.O.1. to M.O.4. No witness was examined on the defense side. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner/accused guilty for the offence under Section 376 (2) (1) & (n) of IPC and convicted and sentenced him to undergo Rigorous Imprisonment for a period of 10 years and to pay a fine of Rs.50,000/-, in default, to undergo Rigorous Imprisonment for a period of one year by passing impugned judgment dated 09.12.2022.

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

6. The learned counsel for the petitioner has submitted that this is the second petition and already the petitioner filed Crl.M.P.(MD) No.2267 of 2023 and the same was dismissed on 16.02.2023 considering short period of incarceration. The victim girl is a major and mentally imbalanced person. The petitioner never committed any crime as alleged by the prosecution. The petitioner was working as a lorry driver in



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the PW4/Vanangamudi brick unit. P.W.1's another daughter Selvi had a love affair with another driver namely Vijayakumar and this was disclosed by the petitioner and later the said Vijayakumar committed suicide. Upon the said motive, the P.W.1/defacto complainant falsely implicated the petitioner/accused in this case by tuting her victim daughter. P.W.3 deposed in her cross examination as she was tuted and she was brought to hospital for the past 5, 6 months and the friends of her brother used to visit her house. Except the victim/PW.3's evidence there is no other evidence supporting the prosecution case. Moreover, the DNA report revealed that the petitioner/accused is not the biological father of the child born to the victim girl. The complaint was given after lapse of 8 months and the prosecution did not explain the reason for the delay. 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 has to look after his family. The petitioner is in prison for more than one year. 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 contentions of the petitioner along with the oral and documentary evidence adduced by the prosecution and come to the conclusion that the petitioner



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committed a sexual relationship with the victim. The DNA test report is not the criteria, the other prosecution evidence clearly proved the crime against the accused.

When the victim girl is a mentally challenged person circumstantial evidence would suffice to prove the case. In this case, circumstantial evidences also supported the prosecution case. The earlier petition was dismissed by this Court on 16.02.2023. There is no change in circumstances after dismissal of the earlier petition. 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 prosecutrix/PW3 is a mentally imbalanced person. On 22.08.2014 the victim girl was found 8 months pregnancy on medical examination and thereafter this case was registered against the petitioner, as the victim girl pointed out the petitioner/accused. It is the main contention of the petitioner that DNA test report is against the prosecution case and it revealed that the petitioner/accused is not the biological father of the child given birth by the victim girl and the admission of prosecution witnesses that the friends of victim girl's brother used to visit her house.

However, these are to be decided while deciding the appeal on merits. However, the



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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 apart from the period of incarceration during trial. 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 Judicial Magistrate Court, Manamadurai;

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



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(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 JUDGE, FAST TRACK MAHILA JUDGE, SIVAGANGAI.
- 2 THE JUDICIAL MAGISTRATE, MANAMADURAI.
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
SIVAGANGAI DISTRICT.
- 4 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, MANAMADURAI,
SIVAGANGAI DISTRICT.
- 5 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.C.MAYIL VAHANA RAJENDRAN, Advocate (SR-18108[I] dated 20/12/2023)

ORDER
IN
CRL MP(MD) No.10012 of 2023
in
CRL A(MD)No.52 of 2023
Date :20/12/2023

SS/SAR- /20/12/2023/7P/8C

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