



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Monday, the Second day of January Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL.M.P. (MD) No.11249 of 2022

in

CRL.A. (MD) No.569 of 2022

AHAMED MEERAN

... APPELLANT / PETITIONER

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
UTHAMAPALAYAM SOUTH POLICE STATION,
THENI

... 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 against the petitioner in Spl S.C No. 31/2020 dated 27.05.2022 on the file of the Learned Fast Track Mahila Judge, Theni and enlarge the petitioner on bail pending disposal of the above appeal.

Prayer in CRL.A. (MD) No.569 of 2022:

To call for the records in Spl.S.C.No.31/2020 dated 27.05.2022 on the file of the Learned Fast Track Mahila Judge, Theni and to set aside the judgment of conviction and sentence.

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.AZAGARSAMI.AK., Advocate for the petitioner and of MR.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the conviction and sentence imposed against the petitioner in Spl.S.C.No.31 of 2020, dated 27/05/2022 by the Fast Track Mahila Judge, Theni and enlarge the petitioner on bail pending disposal of the criminal appeal.

2.The case of the prosecution in brief:-



On 15/01/2020 at about 10.00 am in the morning, when the victim girl was playing in the Street, the accused sexually assaulted her by touching her private part and tried to commit penetrative sexual assault. On the basis of the above said occurrence, the case was registered.

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3. During trial process, on the side of the prosecution to prove the guilt of the accused, 13 witnesses were examined and 13 documents marked. On the side of the accused, none was examined and no document was also exhibited.

4. At the conclusion of the trial process, the trial court found the accused guilty of the offence under section 6 of Protection of Children from Sexual Offences Act, 2012, convicted and sentenced to undergo 10 years R/I and imposed a fine of Rs.5,000/- with default clause. Challenging the above said sentence, criminal appeal has been preferred before this court. Pending appeal, this miscellaneous petition has been filed by the petitioner.

5. The learned counsel appearing for the petitioner would submit that there is a delay in lodging the complaint; the victim has not stated about the occurrence on the same day itself and there was no explanation for the delay of 12 days in preferring the complaint; There is also a motive between the victim girl and the petitioner; no independent witness was examined and the petitioner is in custody for more than two years.

6. But the learned Additional Public Prosecutor would submit that the evidence of the victim girl has been corroborated by the evidence of PW5 and PW8. According to him, no ground has been made out by the petitioner to suspend the sentence.

7. No doubt that there is a delay in preferring the complaint. But whether the delay is sufficient enough for doubting the prosecution case is a matter for consideration at the time of the main appeal.

8. PW1 has stated that only after 10 days of the occurrence, she was informed about the occurrence to the parents. The victim girl has stated to the effect in her evidence that she was sexually assaulted by touching her private part. She informed about the said misbehaviour on the date itself to PW1. There is nothing on record to disbelieve the evidence of PW3 on the face of the record.

9. Whether the contradiction between the victim girl and PW1 is sufficient enough to reject the prosecution case can be found out only during the course of the final hearing of the appeal. The medical evidence also supported the case of the prosecution, wherein PW8 has stated that there was 03 x 03 cm abrasion on the private part of the victim girl. So only on that ground, the trial court



girl. Even though a motive has been suggested, I am considered view that it is not a fittest case to suspend the sentence. The manner, in which the above said occurrence said to have been taken place is sufficient for rejecting the request of the petitioner.

10. In the result, this criminal miscellaneous petition is **dismissed.**

sd/-

02/01/2023

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/01/2023

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

TO

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

ORDER

IN

CRL.M.P. (MD) No.11249 of 2022
in

CRL.A. (MD) No.569 of 2022

Date :02/01/2023

er

MK/MMS/SAR II (09.01.2023) 3P 5C