



CRL MP(MD) No.15569 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 MP(MD) No.15569 of 2023

IN

CRL A(MD) No.400 of 2022

SEKAR

... PETITIONER/ APPELLANT

Vs

THE INSPECTOR OF POLICE
SILAIMAN CIRCLE,
KARUPPAYURANI POLICE STATION,
MADURAI DISTRICT.
(CRIME NO.192/2010).

... RESPONDENT/RESPONDENT

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to grant an order of Suspension of Sentence imposed in the conviction judgment passed in Sessions Case No.347/2013 on the file of the Learned Sessions Judge, Mahalir Neethimandram, Madurai dt.25/5/2022 and enlarge the Petitioner/Appellant/Accused No.2 on bail, pending disposal of the Criminal Appeal.

PRAYER IN CRL.A(MD).400/2022:

Pleased to call for the records relating to Sessions Case No.347 of 2013 on the file of the Learned Sessions Judge, Mahalir Neethimandram, Madurai dated 25.05.2022 and set aside the same in so far as the Appellant/Accused No.2 and to acquit the Appellant/Accused No.2 by allowing the present Criminal Appeal.



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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.VEERANASAMY S, 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	17.11.2023
PRONOUNCED ON	23.11.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner/accused by the learned Sessions Judge, Mahalir Neethimandram, Madurai, in Sessions Case No.347 of 2013, dated 25.05.2022, till the disposal of the Criminal Appeal.

2. The case of the prosecution is that the complainant's daughter aged about 24 years, was a partially mentally challenged person and she was taking training at Special Training Institute at Shenoy Nagar, Maduri, that as usual on 23.03.2010 at about 05.30 p.m., she returned to Suguna Store by bus and while she was proceeding to her house by walking, the first accused, who was residing in the opposite house of the complainant, picked up her in his bicycle near Kani Store, Maruthupandiar Street as if he will drop her in the house, taken her to a remote area at Jubilee Town near Vandiyur, where the accused had sexually assaulted her again and again, that there was heavy bleeding to the victim girl and she fell ill and that on information given by her, complaint was lodged and on that basis, FIR came to be registered in Crime No.192 of 2010 for the offence under Sections 366 and 376 IPC. The respondent after



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completing the investigation, has laid the final report against the petitioner/ A2 and other accused for the offence under Sections 120(b), 376, 366 r/w 34 IPC and the case was taken on file in S.C.No.347 of 2013 on the file of the learned Sessions Judge, Mahalir Neethimandram, Madurai.

3.During the trial, the prosecution has examined 14 witnesses as P.W.1 to P.W.14, exhibited 20 documents as Ex.P1 to Ex.P20 and marked 7 material objects as M.O.1 to M.O.7, whereas, the accused have adduced neither oral nor documentary evidence.

4.After completing the trial, the learned Sessions Judge found the petitioner/ A2 guilty and convicted him for the offence under Sections 120B, 366 r/w 34 and 376 IPC and sentenced him to undergo ten years Rigorous Imprisonment for each offence and to pay a fine of Rs.1,000/-, in default, to undergo one year Simple Imprisonment for each offence. Aggrieved by the said Judgment of conviction and sentence, the petitioner/ A2 has preferred the present appeal along with the above Miscellaneous Petition seeking suspension of sentence.

5.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

6.The learned counsel for the petitioner would submit that the petitioner/ A2 has been falsely implicated in the above case without any iota of evidence, that the



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evidence of P.W.1 and P.W.2, the parents of the victim girl and their evidence is only hearsay, that though P.W.3, P.W.4 and P.W.9 have not supported the case of the prosecution, the trial Court believed their evidence erroneously and convicted the petitioner, that the trial Court itself has specifically observed that there were defects in the investigation, but erroneously gave a finding against the petitioner and that there was inordinate delay in lodging the complaint and the same was also not taken into account by the trial Court. He would further submit that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses. He further submitted that this petition has been filed mainly on the ground that the petitioner is in judicial custody from 25.05.2022.

7.The learned Additional Public Prosecutor for the respondent would submit that the material evidence of P.W.3, P.W.4 and P.W.9 have no reasons to implicate the accused falsely, that the defence has not even suggested anything against the accused on the basis of any motive or ill-will, that P.W.9 has specifically implicated the involvement of the petitioner/A2, that the evidence of P.W.3, P.W.4 and P.W.9 is believable and trust worthy and that the trial Court has rightly convicted the accused including the petitioner. He would further submit that there are enough materials available on record against the petitioner and upon considering the evidence



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available on record, the earlier application filed by the petitioner was rightly dismissed by this Court. He further submitted that without any valid ground, the present petition has been filed by the petitioner. Hence, he strongly opposed to grant suspension of sentence.

8. The earlier petitions filed in Crl.M.P(MD).Nos.12526, 7264 of 2022 and 5634 of 2023 were dismissed by considering the period of incarceration and also considering the gravity of the offence. Now, this application is filed by the petitioner without referring the change of circumstances to consider the case.

9. Since there is no change of circumstance and also considering the gravity of offence and the manner in which the offence was committed by the petitioner against the mentally challenged person/victim girl, this Court is of view that this petitioner is not entitled for suspension of sentence.

10. Accordingly, 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.

TTA
TO
1 THE SESSIONS JUDGE,
MAHALIR NEETHIMANDRAM, MADURAI.



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2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
SILAIMAN CIRCLE,
KARUPPAYURANI POLICE STATION,
MADURAI DISTRICT.

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

ORDER IN
CRL MP(MD) No.15569 of 2023
IN CRL A(MD) No.400 of 2022
Date :23/11/2023

SA/SKN/SAR. /28.11.2023/6P/5C

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