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

Friday, the Fifteenth day of December Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.13205 of 2023

IN

CRL A(MD)No. 846 of 2023

MURUGESAN @ MURUGAN

... PETITIONER/ APPELLANT

Vs

THE INSPECTOR OF POLICE
KUZHITHURAI POLICE STATION,
KANYAKUMARI DISTRICT.
(CRIME NO.309/1998).

... 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 suspend the sentence imposed by Kanyakumari Fast Track Mahila Court, Nagercoil (Camp Court, Kuzhithurai) in SC.No.53/2001 dt.03/03/2023 pending disposal of Criminal Appeal.

PRAYER IN CRL A(MD)No. 846 of 2023:

Pleased to call for records relating to the impugned judgment of conviction passed by Kanyakumari Fast Track Mahila Court, Nagercoil Camp at Kuzhithurai in S.C.No. 53/2001 dated 03.03.2023 and set aside the same and acquit the Appellant/1st Accused from the charges framed against him.



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 MR.A.BALAKRISHNAN, Advocate for the petitioner and of MR.S.MANIKANDAN, Government Advocate on behalf of the Respondent, the court made the following order:-

Reserved on : 05.12.2023

Pronounced on : 15.12.2023

The petitioner has filed this petition to suspend the sentence imposed against him in S.C.No.53 of 2001 on the file of the Kanyakumari Fast Track Mahila Court, Nagercoil (Camp Court, Kuzhithurai), dated 03.03.2023 pending disposal of the Criminal Appeal.

2.The brief facts of the prosecution case:

The petitioner was working as a lorry driver under the father of the victim girl. At the time of occurrence, the victim girl was studying 9th standard. On 11.05.1998 the mother of the victim girl lodged a complaint against the petitioner that the petitioner kidnapped the victim girl. During investigation, it was revealed that on 11.05.1998 at 7.00 p.m the petitioner along with three other accused kidnapped the victim girl in a car and proceeded to Thiruvananthapuram Railway Station, all the accused took the victim girl to Mumbai by train where they stayed two months and the petitioner committed rape forcibly and threatened not to reveal. Thereafter, the



petitioner took the victim girl to Chennai and stayed in a relative house of the petitioner where also the petitioner committed rape, later on, 22.09.1998 the victim girl took all her belongings and came back to native on 23.08.1998, the police secured the victim girl. The respondent police registered the FIR in Crime No.309 of 1998 for the offence under Section 363 of IPC. P.W.10 - Inspector of Police did investigation and laid a charge sheet. The petitioner was charged for the offence under Sections 363, 366A, 342, 376 r/w 120B of IPC.

3. To prove the charge, the prosecution examined 10 witnesses as P.W.1 to P.W.10 and marked 18 exhibits as Ex.P1 to Ex.P18. M.O.1 was marked. The petitioner/accused has not examined any witness and not marked any document. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner/accused guilty for the offence under Sections u/s 376, 366, 363, 342 of IPC and convicted and sentenced him to undergo Rigorous Imprisonment for a period of 8 years and to pay a fine of Rs.2,000/-, in default, to undergo Rigorous Imprisonment for a period of 12 months for the offence under Section 376 of IPC; convicted and sentenced him to undergo Rigorous Imprisonment for a period of 5 years and to pay a fine of Rs.2,000/-, in default, to undergo Rigorous Imprisonment for a period of 12 months for the offence under Section 366 of IPC; convicted and



sentenced him to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.1,000/-, in default, to undergo Rigorous Imprisonment for a period of 3 months for the offence under Section 363 of IPC and convicted and sentenced him to undergo Rigorous Imprisonment for a period of 6 months for the offence under Section 342 of IPC and directing the sentences to run concurrently by passing the impugned judgment dated 03.03.2023.

4. 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 pending disposal of the appeal.

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

6. The learned counsel for the petitioner has submitted that the victim girl had not raised any objection when she was allegedly kidnapped from her house to Bombay and to Chennai and when they stayed more than 3 ½ months. P.W.1 and P.W.3 admitted that the pregnancy was aborted. No DNA test was made. Only after two years, in the year 2000, the victim girl stated that the petitioner raped her several times. There was previous enmity between the petitioner family and P.W.1 family. Except official witnesses, all the other witnesses examined by the prosecution are close relatives with each other. The petitioner and the victim girl married separately



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and are living separately along with their respective families. Co-accused were acquitted. Therefore, the charge under Sections 366 and 376 of IPC would not attract against the petitioner. The petitioner never committed any crime. 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 is in prison for 8 months. He is suffering from hernia. The petitioner has family and to maintain his family. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner.

7. Per contra, the learned Government Advocate (Criminal Side) 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 conclusion that the petitioner forcibly kidnapped the victim girl to Mumbai and Chennai and he committed rape on her. The P.W.1 and victim girl deposed that the fetus was aborted. Medical evidence revealed the commission of rape. The period of incarceration is immaterial. 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 sides rival arguments and on perusal of records, it is clear

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that the petitioner and the prosecutrix/PW1 are now majors and they are living separately along with their respectively families. It is the main case of the petitioner that the victim girl stated after lapse of two years that she was kidnapped and raped by the petitioner. No DNA test was conducted and it is admitted that the fetus was aborted, but there is no medical proof by prosecution. It is also the main argument that when the victim girl was kidnapped by the petitioner she did not cry or raise noise and she did not disclose about kidnap to the neighbours in Mumbai and Chennai when it is stated that the petitioner and the victim girl stayed totally 3 ½ months. However, these are to be decided while deciding the appeal on merits. However, the learned counsel for the petitioner pointed out certain infirmities and inconsistencies in this case and also certain admission by P.W.1 and 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 nearly eight months from the date conviction. The petitioner says that he has family and has to maintain his family members. 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 learned Sessions Judge, Kanyakumari Fast Track Mahila Court, Nagercoil (Camp Court, Kuzhithurai);

(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

(iii) The petitioner shall appear before the concerned Court on first working day of every week at 10.30 a.m., until further orders.

sd/-
15/12/2023

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15/12/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

VSD

TO

1 THE SESSIONS JUDGE
KANYAKUMARI FAST TRACK MAHILA COURT,
NAGERCOIL CAMP AT KUZHITHURAI.

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- 2 THE INSPECTOR OF POLICE
KUZHITHURAI POLICE STATION,
KANYAKUMARI DISTRICT.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, PALAYAMKOTTAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to MR.K.P.NARAYANA KUMAR Advocate SR.No.56830 (F) DT: 15/12/2023

ORDER
IN
CRL MP(MD) No.13205 of 2023
IN
CRL A(MD)No. 846 of 2023
Date :15/12/2023

PKP/15.12.2023/ 8P/6C

Madurai Bench of Madras High Court is issuing certified
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