



CRL MP(MD) No.13989 of 2023

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

Friday, the Tenth day of November Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.13989 of 2023

in

CRL A(MD)No.895 of 2023

RAHIM @ KAMARDEEN ... PETITIONER/APPELLANT/SOLE ACCUSED

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
THENI

THENI DISTRICT,
CRIME NO.13/2020

... 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 and enlarge the petitioner on bail imposed on the appellant by the judgment dated 05.08.2023 made in Spl.SC.No.60/2020 on the file of the Fast Track Mahila Sessions Court, Theni.

PRAYER in CRL A(MD)No.895 of 2023:

To call for the records relating to the judgment dated 05.08.2023 made in Spl.S.C.No.60 of 2020 on the file of Fast Track Mahila Sessions Court, Theni and set aside the conviction and sentence imposed against the Appellant/accused and allow above appeal by acquitting the accused.



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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.MOHAMED ASLAM.M.U, 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 : 01.11.2023

Pronounced on : 10.11.2023

The petitioner has filed this petition to suspend the sentence imposed against him in judgment dated 05.08.2023 made in Spl.S.C.No.60 of 2020 on the file of the Fast Track Mahila Sessions Court, Theni and to enlarge him on bail till the disposal of Criminal Appeal.

2.The brief facts of the prosecution case:

The victim girl is the daughter of the defacto complainant and was doing 5th std at Trichy. As the school are not functioning, the victim girl came to her parent house. The petitioner is running a petty shop in his residence near the resident of defacto complainant. The defacto complainant asked her victim daughter to purchase some snacks from the petitioner's petty shop, on 22.09.2020 at about 8.00 p.m the victim girl came to the petty shop and purchased some snacks. After purchase the petitioner took the victim girl inside his petty shop and made sexual assault by hugging behind her and also threatened her. On disclosure the act of the petitioner,



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the defacto complainant lodged a criminal complaint before the All Women Police Station, Theni against the accused. FIR was registered in Cr.No.13 of 2020 under Section 9(m) and 10 of POCSO Act and 506(i) of IPC against the petitioner. P.W.10 - Inspector of Police did investigation and laid charge sheet against the petitioner. The petitioner was charged for the offences under sections 506(i) of IPC and under Section 9(m) r/w 10 of POCSO Act.

(i) To prove the charge the prosecution examined 10 witnesses as P.W.1 to P.W.10 and marked 9 exhibits as Ex.P1 to Ex.P10. On the defence side DW1 was examined and no exhibit was marked. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner/accused guilty under Section 9(m) r/w 10 of the POCSO Amendment Act and convicted and sentenced him to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months Simple Imprisonment by passing impugned judgment dated 05.08.2023.

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 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 defacto complainant was doing lottery business and he had credit transactions with the petitioner. The defacto complainant is liable to pay outstanding money and hence, the petitioner stopped business transaction few months before with the defacto complainant. Hence, the defacto complainant lodged a false complaint against the petitioner under the guise of sexual assault made by the petitioner upon the victim girl. The petitioner never did such offences, his wife was also present at the time of alleged occurrence and she deposed as DW1 to substantiate the case of the petitioner. The petitioner is aged 50 years and is in prison. The petitioner has 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 victim girl was aged about 9 years old at the time of alleged occurrence. The victim child while deposing before the Trial Court was 11 years and clearly narrated the



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offences committed by the accused without any shake. The victim girl had no motive over the petitioner to make false allegations levelled in the charge and there is no reason to doubt the trustworthiness of the evidence of victim girl. The petitioner committed the crimes. Doctor 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 petitioner is awarded 5 years imprisonment and is in jail after conviction made on 05.08.2023. Therefore, he strongly opposed to grant suspension of sentence and thereby the petitioner is not entitled to bail and relied on the judgment of this court rendered in CrI.A.No.656 of 2019 dated 17.02.2021.

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 was running petty shop near the residence of victim girl. On perusal of records and judgement of the trial Court, it is clear that the evidence of the victim girl who was examined as P.W.2, was cogent and does not suffer from any infirmity. The reading of the evidence of P.W.1 and P.W.2 shows that the victim was sexually assaulted by the petitioner as narrated in the Ex.P.1 complaint. The victim girl evidence cannot be rejected in toto as a false one. P.W.5, who is the Doctor,



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examined the victim and he stated that the victim was subjected to sexual assault.

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The contention of the learned counsel for the petitioner is matter for consideration in the appeal. The petitioner is in jail for short period from 05.08.2023 after passing the impugned judgment though he was on bail earlier. 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 if he is released on bail, there is a possibility of making trouble to the victim girl in future and also this is not a fit case to exercise the jurisdiction of suspense of sentence.

8. In the result, this Criminal Miscellaneous Petition stands dismissed.

sd/-
10/11/2023

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

VSD
TO

- 1 THE JUDGE,
FAST TRACK MAHILA SESSIONS COURT, THENI.
- 2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
THENI
THENI DISTRICT



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3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.

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

ORDER
IN
CRL MP(MD) No.13989 of 2023
in
CRL A(MD)No.895 of 2023
Date :10/11/2023

SS/DD/SAR- /15/11/2023/7P/5C

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