



Crl.M.P(MD)No.14526 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Tuesday, the Twenty First day of November Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

Crl.M.P(MD)No.14526 of 2023

in

Crl.A.(MD)No.410 of 2023

K.SURESH KUMAR

... APPELLANT NO.1/ACCUSED NO.1

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
GANDAMANUR POLICE STATION,
THENI DISTRICT.
CRIME NO.307/2016.

... RESPONDENT/COMPLAINANT

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 the judgment dt.19.04.2023 made in Spl SC No.78/2016 on the file of Learned Mahila Fast Track Court, Theni and enlarge the Petitioner on bail pending disposal of the above appeal.

PRAYER IN CRL A(MD)No.410 of 2023:

To call for the records relating to the judgment dated 19.04.2023 made in Spl.S.C.No.78 of 2016 on the file of Mahila Fast Track Court, Theni and set aside the conviction and sentence imposed against the appellants/accused and allow above appeal by acquitting the accused.



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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 Mr.MOHAMMED IMRAN.H, Advocate for M/S.AJMAL ASSOCIATES, for the petitioner and of Mr.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-

RESERVED ON	19.10.2023
PRONOUNCED ON	21.11.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner/accused No.1 by the learned Mahila Fast Track Court, Theni, in Spl.S.C.No.78 of 2016, dated 19.04.2023, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that when the parents of the victim girl has rejected the marriage proposal of the petitioner that on 08.09.2016, the petitioner with the help of the Accused Nos. 2 and 3, who are the parents of the petitioner, by using sweet coated words had kidnapped the victim girl, who was aged 17 years at that time, to Pothankadu, Thiruvananthapuram and stayed at the house of the Accused Nos. 4 and 5 and at that time, the petitioner had tied thali on the victim girl and



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committed penetrative sexual assault on her, that the victim girl's mother has lodged a complaint before the respondent police on 10.09.2016 and on that basis, FIR came to be registered as 'Girl Missing' in Crime No.307 of 2016 and that after coming to know about the involvement of the accused and after securing the victim girl, the case was altered.

3. The respondent police, after completing the investigation, has filed the final report and the case was taken on file in Spl.S.C.No.78 of 2016 and the same was pending on the file of the Fast Track Mahila Court, Theni.

4. During trial, the prosecution has examined 25 witnesses as P.W.1 to P.W.25, exhibited 20 documents as Ex.P.1 to Ex.P.20 and marked 2 material objects as M.O.1 and M.O.2. The defence have adduced neither oral nor documentary evidence.

5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 19.04.2023 convicting the petitioner and sentenced him as follows:-



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Accused	Provision under which convicted	Sentence
A1-K.Suresh Kumar	under Section 366 IPC	to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for 2 years
	under Section 6 of POCSO Act	to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for 2 years

6. Aggrieved by the said judgment of conviction and sentence, the petitioner has come forward with the present criminal appeal along with the above application for suspension of sentence.



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7. The learned Senior Counsel appearing for the petitioner would submit that P.W.1 and the accused persons are close relatives, that the defacto complainant's daughter-victim girl herein had an unrequited love towards the petitioner, despite knowing that the petitioner is a married man and is having kids, that on 08.09.2016, the victim girl came to the house of the petitioner and compelled him to marry her, otherwise she threatened to commit suicide, that the Accused Nos. 1 to 3 advised her to tell about the same to her parents, but the victim girl informed that if any permission is asked from her parents, they would create problem, that if the petitioner has not brought to her elsewhere, she would commit suicide and that in that delegate situation having no other way, in order to prevent untoward situation, the petitioner decided to take the victim girl to his cousin sister's house situated at Thiruvananthapuram.

8. Further the learned Senior Counsel appearing for the petitioner would submit that the petitioner had never kidnapped the victim girl, the victim girl herself fell in love with the first petitioner and voluntarily left with him, that if the victim girl was kidnapped in the bus, she would have raised hue and cry, but she has not made any alarm or attempted to escape and that the victim girl had deposed that she was transported through bus from Rajapalayam to Tirunelveli. He would further submit



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that family disputes between the two families were ingeniously played as against the petitioner with the help of the respondent police and that the trial Court has failed to consider the material contradictions of the prosecution witnesses and also the fact that some of the witnesses had turned hostile.

9. The learned Additional Public Prosecutor appearing for the respondent would submit that the victim girl has not completed 18 years of age, that the victim girl has given statement under Section 164 Cr.P.C. implicating the involvement of the petitioner and that the victim girl in her evidence before the trial Court has reiterated the same. He would further submit that the petitioner along with the Accused Nos. 2 and 3 had kidnapped the victim girl, that since the victim girl was a child, the question of taking her with her consent does not arise and that even according to the petitioner, he had taken the victim girl to Pothankadu, Thiruvananthapuram and stayed there in the house of the Accused Nos. 4 and 5 and according to the victim girl, the petitioner in the presence of the Accused Nos.4 and 5 had tied thali and committed penetrative sexual assault for three days.

10. It is evident from the records that originally FIR came to be registered in Crime No.307 of 2016 on 10.09.2016 as 'Girl Missing' and subsequently, the case was

<https://www.mhc.tn.gov.in/judis>



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altered and after completing the investigation, charge sheet came to be filed for the offences under Sections 366 and 366(A) IPC and Sections 5(l) r/w 6 and 17 of POCSO Act.

11. This Court has dismissed the the petition for suspension of sentence filed by all the accused in Crl.M.P(MD).No.7673 of 2023 dated 07.07.2023. After some time, they have filed Crl.M.P(MD).No.11690 of 2023 and the same was partly allowed by granting suspension of sentence to the accused Nos.2 to 5 and dismissed against the first accused/petitioner. Now this petition has been filed mainly on the ground that the petitioner is in judicial custody from 19.04.2023.

12. Considering the facts and circumstances of this case and the Accused Nos.2 to 4 have already been granted suspension of sentence and considering the period of incarceration and the fact remains that there are arguable points involved in this Criminal Appeal and further the Criminal appeal is not likely to be taken up for final hearing in the near future and as such, this Court is of the considered view that the petitioner is entitled to the relief of grant of suspension of sentence. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal with the following directions :-



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(i) The petitioner/ Accused No.1 is directed to be enlarged on bail on condition that 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 Mahila Fast Track Court, Theni.

(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 trial Court on first working day of every week at 10.30 a.m., until further orders.

sd/-
21/11/2023

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22/11/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

1 THE MAHILA FAST TRACK JUDGE,
THENI.



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2 THE INSPECTOR OF POLICE
GANDAMANUR POLICE STATION, THENI DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

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

+1 cc to M/S.AJMAL ASSOCIATE, Advocate SR-16678

ORDER
IN
Crl.M.P(MD)No.14526 of 2023
in
Crl.A.(MD)No.410 of 2023
Date :21/11/2023

RK (22/11/2023) 9P / 6C

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