



CRL MP(MD) No.15938 of 2023

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

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

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.15938 of 2023

in

CRL A(MD) No.343 of 2023

SHAJAKAN

... APPELLANT/ACCUSED

Vs

**1 THE DEPUTY SUPERINTENDENT OF POLICE,
DINDIGUL RURAL, SUB DIVISION,
(*)NATHAM POLICE STATION,
DINDIGUL DISTRICT.
(CRIME NO.626/2015)**

... RESPONDENT/COMPLAINANT

2 ALAGAMMAL

... RESPONDENT/DEFACTO COMPLAINANT/VICTIM

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 the Learned Fast Track Mahila Court, Dindigul in Spl.SC.No.20/2018 dt.13/7/2022 and enlarge the appellant on bail pendin disposal of the above said Crl.A.

Prayer in CRL A(MD).343/2023 :

To call for the records and set aside the sentence and conviction imposed by the learned Fast Track Mahila Court, Dindigul in Spl S.C.No.20 of 2018 dated 13.07.2022.

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.S.M.A JINNAH, Advocate for the petitioner and of MR.B.NAMBI SELVAN,

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Additional Public Prosecutor on behalf of the 1st Respondent and M/S.J.BALAMEENAKSHI, Advocate on behalf of the 2nd Respondent, the court made the following order:-

Reserved on : 20.11.2023

Pronounced on : 08.12.2023

The petitioner has filed this petition to suspend the sentence imposed against him in judgment dated 13.07.2022 made in Spl.S.C.No.20 of 2018 on the file of the Fast Track Mahila Court, Dindigul and to enlarge him on bail till the disposal of Criminal Appeal.

2.The brief facts of the prosecution case:

The defacto complainant/PW1 is grandmother of the victim girl. The petitioner/accused and the PW.1 are residing in same street. On 04.11.2015 at 1.30 p.m, while the victim child was playing in front of one Maduraiveeran's house, the petitioner/accused gave chocolate and took the victim child inside the Maduraiveeran's house, removed her dresses and touched her private part. The act of the petitioner/accused was informed by the victim child to PW.1, who in turn lodged a police complaint before Natham Police Station. Based on the complaint FIR was registered in Crime No.626 of 2015. P.W.20 - Deputy Superintendent of Police did investigation and laid charge sheet for the offence under Section 8 of POCSO Act, 2012 and under Section 3(1)(xi) of SC/ST (POA) Act,1989. The petitioner was charged by the trial Court for the offence under Sections 9(m) r/w 10 of POCSO Act, 2012 and

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under Section 3(1)(xi) of SC/ST (POA) Act,1989.

(i) To prove the charge, the prosecution examined 20 witnesses as P.W.1 to P.W.20 and marked 15 exhibits as Ex.P1 to Ex.P15. On defence side no witness was examined and no document was marked. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner/accused guilty for the offence under Section 9(m) r/w 10 of POCSO Act, 2012 and under Section 3(1)(xi) of SC/ST (POA) Act, 1989 and convicted and sentenced him to undergo Rigorous Imprisonment for a period of 5 years and to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for a period of one month for the offence under Section 9(m) r/w 10 of POCSO Act, 2012 and to undergo Rigorous Imprisonment for a period of six months and to pay a fine of Rs.1000/-, in default, to undergo Simple Imprisonment for a period of one month for the offence under Section 3(1)(xi) of SC/ST (POA) Act,1989 by passing impugned judgment dated 13.07.2022.

3. Aggrieved by the conviction judgment, the accused has preferred the present Criminal Appeal before this Court. Along with appeal, the petitioner has filed Crl.M.P.(MD)No.6677 of 2023 seeking for suspension of sentence and for bail till the disposal of the appeal and the same was dismissed by this Court on 19.06.2023. This is the second petition filed by the petitioner/accused seeking the same relief.

4. Heard both sides and perused the records in this petition.



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5.The learned counsel for the petitioner has submitted that the petitioner is a neighbor of P.W.1. There was money transaction between the petitioner and P.W.1. Upon money transaction, the P.W.1 falsely implicated the petitioner in this case. The victim/PW2 stated the name of accused as 'Karuvayan', the petitioner's name is Shajakhan, in Ex.P.1 - Complaint the petitioner's name was not there. While the victim was examined, Section 24 was not followed. P.W.1 and P.W.3 are interested witnesses. The Investigating Officer has not examined the chit member regarding the money transaction between the petitioner and the P.W.1. No identification parade was conducted. The petitioner is in prison for the past one and half years from the date of judgment. The petitioner has a 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 earlier petition was dismissed by this Court on 19.06.2023. The prosecution clearly established that the petitioner is called by name 'Karuvayan' and so the victim child mentioned the name. It is not the case that the petitioner was not called as karuvayan. The victim was examined as P.W.2 who clearly identified the accused before the Trial Court, that is enough for conviction. Hence, there is no need for an identification parade. The Trial Court has correctly appreciated the evidence and has



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correctly passed the judgment convicting the accused as stated therein. Therefore, he strongly opposed to grant suspension of sentence and bail.

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. During the course of argument, the learned counsel for the petitioner has drawn the attention of the Court to certain grounds of defence that the prosecution witnesses P.W.1 and P.W.3 deposed about money transaction between the petitioner and P.W.1 and the petitioner has a fair chance of succeed in the appeal. However, these are to be decided while deciding the appeal on merits. At the same time, the learned counsel for the petitioner pointed out that certain infirmities and inconsistencies in this case. The fact remains that there are arguable points involved in this criminal appeal and further the criminal appeal is of the year 2023 and the same is not likely to be taken up for final hearing in the near future. The petitioner is in prison for one and half years from the date of conviction. In the above circumstances and also considering incarceration period of petitioner, 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.

8. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended till the disposal of the appeal on the following



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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, Fast Track Mahila Court, Dindigul.

(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 and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 of Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

sd/-
08/12/2023

(*)FOR BEING MENTIONED AS PER
ORDER OF THIS HON'BLE COURT
DT.22/12/2023 IN CRL MP(MD)No. 15938 of
2023 in CRL A(MD)No. 343 of 2023

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22/12/2023

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

VSD



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TO

TO BE SUBSTITUTED WITH THE ORDER DT. 08/12/2023 ALREADEY
DESPATCHED

1 THE SESSIONS JUDGE, FAST TRACK MAHILA COURT, DINDIGUL.

2 THE DEPUTY SUPERINTENDENT OF POLICE, DINDIGUL RURAL,
SUB DIVISION, NANTHANUR POLICE STATION, DINDIGUL DISTRICT.

3 THE DEPUTY SUPERINTENDENT OF POLICE, DINDIGUL RURAL,
SUB DIVISION, NATHAM POLICE STATION, DINDIGUL DISTRICT.

4 THE SUPERINTEDENT, CENTRAL PRISON, MADURAI.

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

ORDER

IN

CRL MP(MD) No.15938 of 2023

in

CRL A(MD) No.343 of 2023

Date :08/12/2023

RS//SAR-(08.12.2023) 7P 5C

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