



CRL MP(MD) No.15141 of 2023

WEB COPY

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

Wednesday, the Twentieth day of December Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.15141 of 2023

in

CRL A(MD)No.96 of 2023

MURUGAVEL

... PETITIONER/APPELLANT

Vs

THE INSPECTOR OF POLICE
PALANI ALL WOMEN POLICE STATION,
PALANI,
DINDIGUL DISTRICT.
CRIME NO.12/2021.

... 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 in the order of conviction against the petitioner/appellant in Spl SC No.36/2021 dated 09.12.2022 on the file of the Learned Sessions Judge, Fast Track Mahila Court, Dindigul till the disposal of pending appeal.

PRAYER in CRL A(MD)No.96 of 2023:

To call for the records pertaining to the Judgment dated 09.12.2022 in Spl.S.C.No.36 of 2021 on the file of the Learned Sessions Judge, Fast Track Mahila Court, Dindigul and to set aside the same, by allowing this Criminal Appeal and may be pleased to acquit the Appellant/Accused.

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.KARUPPASAMY.M, Advocate for the petitioner and of Mr.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-



WEB COPY



CRL MP(MD) No.15141 of 2023

Reserved on : 27.11.2023
Pronounced on : 20.12.2023

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in Spl.S.C.No.36 of 2021, dated 09.12.2022 by the learned Sessions Judge, Fast Track Mahila Court, Dindigul till the disposal of the Criminal Appeal.

2.The case of the prosecution is that on 14.06.2021 at about 11.00 p.m., the petitioner/sole accused hugged and kissed the victim girl and also subjected her to sexual assault by promising that he would marry her and thereafter, the victim girl was kidnapped to Ganapathi Nagar, Palani. Based on the complaint F.I.R. was registered in Crime No.12 of 2021 for the offence under Section 363 of IPC and Sections 3(a) r/w 4 of POCSO Act. After completion of investigation, final report was filed before the learned Sessions Judge, Fast Track Mahila Court, Dindigul and the same was taken on file in Spl.S.C.No.36 of 2021.

3.During trial, the prosecution has examined 9 witnesses as P.W.1 to P.W.9 and 10 documents were marked as Ex.P1 to Ex.910. On the defence side, no witness was examined and no exhibit was marked.

4. The learned Trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments on both the sides, has passed the



CRL MP(MD) No.15141 of 2023

impugned judgment dated 09.12.2022 convicting the petitioner for the offence under Section 363 of IPC and sentenced him to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of 3 months and for the offence under Section 4 of POCSO Act sentenced him to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.20,000/-, in default, to undergo simple imprisonment for a period of 6 months. Challenging the above said conviction and sentence, the petitioner preferred the present Criminal 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 appearing for the petitioner would submit that the petitioner and the victim girl are close relatives and both loved each other for the past two years and only as per the consent of the victim girl, the petitioner had sexual intercourse with her and due to previous enmity between the victim's parents and the petitioner, the petitioner has falsely implicated in this case. He would further submit that the petitioner's wife died on 29.01.2015 and his two school going children suffering from severe loss of both father and mother to lookout their daily livelihood. Further, the learned counsel for the petitioner would submit that this is



CRL MP(MD) No.15141 of 2023

the third application and the petitioner is in judicial custody from 09.12.2022 and he is also ready to abide by any condition imposed by this Court. Hence, he prayed to suspend the sentence imposed on the petitioner.

7. The learned Additional Public Prosecutor appearing for the respondent submitted that the learned trial Judge, upon considering all the evidence on records, has rightly convicted the petitioner. He would further submit that at the time of occurrence, the petitioner was a married man and having two children. Taking advantage of the immaturity, the victim was taken to several places and was also subjected to sexual intercourse. He would further submit that this is the third application and the earlier applications were dismissed by this Court on 24.02.2023 and 19.06.2023 and there is no change in circumstances. Hence, he strongly opposed to grant suspension of sentence.

8. No doubt, the earlier applications for suspension of sentence filed by the petitioner in Crl.M.P.(MD)No.2172 of 2023 and Crl.M.P(MD)No.5331 of 2023 were dismissed by this Court on 24.02.2023 and 19.06.2023 respectively. However, the petitioner is in judicial custody from 09.12.2022, apart from judicial custody during trial. His period of incarceration is now more than one year. Further on perusal of records, it is seen that the petitioner is the only breadwinner of his family consisting of his mother and two school going children.



CRL MP(MD) No.15141 of 2023

WEB COPY

9. The learned counsel for the petitioner pointed out 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 from 09.12.2022. In the above circumstances and also considering the incarceration period of the 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.

10. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended till the 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, 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



CRL MP(MD) No.15141 of 2023

WEB COPY

(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/-
20/12/2023

/ TRUE COPY /

20/12/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

VSD

TO

- 1 THE SESSIONS JUDGE,
FAST TRACK MAHILA COURT, DINDIGUL.
- 2 THE INSPECTOR OF POLICE
PALANI ALL WOMEN POLICE STATION,
PALANI,
DINDIGUL DISTRICT.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.M.KARUPPASAMY, Advocate (SR-18077[I] dated 20/12/2023)



WEB COPY



CRL MP(MD) No.15141 of 2023

ORDER
IN
CRL MP(MD) No.15141 of 2023
in
CRL A(MD)No.96 of 2023
Date :20/12/2023

SS/SAR- /20/12/2023/7P/6C

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