



CRL MP(MD) No.15849 of 2023

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

Wednesday, the Fifteenth day of November Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice V.SIVAGNANAM

CRL MP(MD) No.15849 of 2023

IN

CRL A(MD) No.999 of 2023

S.MOHAMMED THARICK @ MOHAMMED NAIZER,

... PETITIONER/ APPELLANT/ ACCUSED

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
THOOTHUKUDI,
CR.NO.03/2020

... 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 passed by the learned Sessions Judge Magila Neethimandram(FTC) Thoothukudi in SC No.211/2020 through a Judgment dt 31.10.2023 and enlarge the petitioner on bail.

PRAYER IN CRL.A(MD).999/2023:

Pleased to admit this Appeal on file and call for records from the Lower Court namely Magila Neethimandram / Sessions Judge (Fast Track Court), Tuticorin in S.C.No.211/2020 and to set-aside the Judgment passed in same and Acquit the above Accused from the charges.



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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 Mr.KA.RAAMAKRISHNAN, Advocate for the petitioner and of Mr.K.SANJAY GANDHI, Government Advocate(crl.side) on behalf of the Respondent, While admitting the Criminal Appeal, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the learned Sessions Judge/Magila Neethimandram (FTC), Thoothukudi, in S.C.No.211 of 2020 dated 31.10.2023 and enlarge the petitioner on bail till the disposal of this Criminal Appeal.

2. The case of the prosecution is that the petitioner has sexual relationship with the victim by giving false promise. Therefore, the defacto complainant gave a complaint against the petitioner and the case was registered against the petitioner by the respondent police in Crime No.3 of 2020. After completion of investigation formalities, final report was filed before the concerned Court for the offences under Sections 366, 376(2), 417 and 506(ii) IPC and the final report was taken on file in S.C.No.211 of 2020.

3. Before the trial Court, on the side of the prosecution, 10 witnesses have been examined as P.W.1 to P.W.10 and 13 documents were marked as Ex.P1 to Ex.P13. On the side of the accused, no witness was examined and no documents were marked.

4. The learned Sessions Judge/Magila Neethimandram (FTC), Thoothukudi,



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upon considering the evidence both oral and documentary and on hearing the arguments on both the sides, has passed the impugned judgment dated 31.10.2023 by convicting the petitioner for the alleged offence under Sections 376(2)(n) and 417 IPC and sentenced him to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.5,000/- (Rupees Five Thousand only), in default to undergo simple imprisonment for a period of six months for the offence under Section 376(2)(n) IPC and sentenced him to undergo simple imprisonment for a period of six months and to pay a fine of Rs.2,000/- (Rupees Two Thousand only), in default to undergo simple imprisonment for a period of one month for the offence under Section 417 IPC. The trial Court has ordered to run the above sentence concurrently. Challenging the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

5. The learned counsel for the petitioner would submit that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses.

6. The learned Government Advocate (criminal side) appearing for the respondent would submit that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

7. This Court has carefully considered the rival contentions put forward by



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either side and also perused the materials available on record.

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8. The learned counsel for the petitioner pointed out that certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. 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 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 with the following directions:-

(i) The petitioner 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 learned Sessions Court, Magila Neethimandram (FTC), Thoothukudi.

(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



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(iii) The petitioner shall appear before the trial Court once in a month i.e., on the first working day of every English calendar month at 10.30 a.m., until further orders.

sd/-
15/11/2023

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16/11/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

SKN
TO

1 THE SESSIONS JUDGE /
MAGILA NEETHIMANDRAM (FTC), THOOTHUKUDI.

2 THE SUPERINTENDENT,
CENTRAL JAIL, PALAYAMKOTTAI, TIRUNELVELI DISTRICT.

3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
THOOTHUKUDI.

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

+1 CC to M/s.KA.RAAMAKRISHNAN, Advocate (SR-16369[I] dated 16/11/2023)

ORDER IN
CRL MP(MD) No.15849 of 2023
Date :15/11/2023

SA/SAR. /16.11.2023/5P/6C

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