



CRL MP(MD) No.1275 of 2024

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

Monday, the Eighteenth day of March Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

Crl.M.P.(MD) No.1275 of 2024
in
Crl.A(MD) No.484 of 2023

KOWSHIK KUMAR @ KOWSHIK ... PETITIONER/ ACCUSED NO.1

Vs

THE INSPECTOR OF POLICE
KARUR TOWN POLICE STATION,
KARUR DISTRICT.
(IN CRIME NO.1512/2021).

... 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 imposed against the appellant in Spl.SC.No.12/2022 dated 16.12.2022 on the file of the Additional Sessions Judge,(Fast Track Mahila Court), Karur District and release the appellant on bail till the disposal of the main appeal

Prayer in Crl.A(MD) No.484 of 2023:

To call for the entire records connected to the judgment in Spl.S.C.No.12 of 2022 on the file of the Additional Sessions Judge, (Fast Track Mahila Court), Karur dated 16.12.2022 and set aside the conviction and sentence imposed against the appellant.

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.R.ALAGUMANI, Advocate for the petitioner and of MR.R.SIVAKUMAR,



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Government Advocate(Crl.side) on behalf of the Respondent, the court made the following order:-

The petitioner has filed this Criminal Miscellaneous Petition praying to suspend the sentence passed against him by the learned Additional Sessions Judge, (Fast Track Mahila Court), Karur District, in Spl.S.C.No.12 of 2022 dated 16.12.2022 and to enlarge him on bail, pending disposal of the Criminal Appeal.

2. The case of the prosecution is that the defacto complainant is the father of the victim girl aged 14 years. At the time of occurrence, the petitioner/A1 was aged 19 years. In the present case, Accused Nos.2 and 3 are the father and mother of A1. It is alleged that on 29.09.2021, A1 has kidnapped the victim girl to Thiruppur under the guise of marrying the victim girl. Thereafter, A1 took the victim girl to the house of A2 and committed the offence of penetrative sexual assault on the victim girl. Based on a complaint given by the father of the victim girl (P.W.1), a case has been registered by the respondent Police in Crime No.1512 of 2021 punishable under Section 366 of IPC and Section 9 of 'the Protection of Children from Sexual Offences Act, 2012' [hereinafter referred to as 'POCSO Act' for the sake of brevity] and Section 6 of the Prohibition of Child Marriage Act, 2006 and the same was taken on file before the learned Additional Sessions Judge, (Fast Track Mahila Court), Karur District. The



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petitioner was convicted and sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1000/- with one year simple imprisonment in case of default for the offence committed under Section 366 of IPC, to undergo 2 years Simple Imprisonment and to pay a fine of Rs.1000/- with 3 months simple imprisonment in case of default and the petitioner was convicted and sentenced to undergo 20 years Rigorous Imprisonment and to pay a fine of Rs.1000/- with one year simple imprisonment in case of default for the offence committed under Section 6 of POCSO Act. Challenging the above said conviction and sentence, the petitioner has preferred the present Miscellaneous Petition seeking suspension of sentence.

3. Learned counsel for the petitioner submitted that to establish the fact as to where the victim girl was kidnapped by A1, the respondent police had neither prepared observation mahazar nor rough sketch. Moreover, the occurrence took place on 29.09.2021, however, the FIR was registered only on 04.10.2021. Though P.W.1 was well aware about the missing of his daughter even on 29.09.2021, he has preferred the complaint belatedly only on 04.10.2021. In these circumstances, without considering the facts of the case, the Court below had convicted the petitioner. Hence, the learned counsel prays for suspension of sentence of the petitioner.



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4. The learned Additional Public Prosecutor appearing on behalf of the respondent submitted that at the time of occurrence, the accused/petitioner himself was 19 years whereas the victim girl was 14 years. Therefore, the accused has committed penetrative sexual assault on the innocent child and thereby, he prayed for dismissal of this petition.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. Side) appearing for the State and perused the materials available on record.

6. On due consideration of the facts and circumstances of the case and having meticulously perused the evidence on record, without expressing any opinion on merits of the case, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

7. Accordingly, this Criminal Miscellaneous Petition is allowed. The sentence imposed by the learned Additional Sessions Judge, (Fast Track Mahila Court), Karur District, in Spl.S.C.No.12 of 2022 dated 16.12.2022 alone is suspended, subject to the following stringent conditions:-



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i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two blood sureties each for a like sum to the satisfaction of the learned Additional Sessions Judge, (Fast Track Mahila Court), Karur District;

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;

iii) The petitioner shall appear and sign before the trial Court on the first working day of every English calender month at 10.30 a.m., until further orders.

iv) The petitioner shall furnish his residential address and mobile number to the Trial Court ie., learned Additional Sessions Judge, (Fast Track Mahila Court), Karur District.



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allowed.

8. Subject to the above conditions, this Criminal Miscellaneous Petition is

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18/03/2024

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18/03/2024
Sub-Assistant Registrar (CS -II)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

- 1.THE ADDITIONAL SESSIONS JUDGE,
(FAST TRACK MAHILA COURT), KARUR DISTRICT,
2. THE SUPERINTENDENT
CENTRAL PRISON,
TRICHY.
- 3.THE INSPECTOR OF POLICE
KARUR TOWN POLICE STATION,
KARUR DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+2 cc to MR.R.ALAGUMANI, Advocate SR-3392, 3344 DATED 19.03.2024



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ORDER
IN
Crl.M.P.(MD) No.1275 of 2024
in
Crl.A(MD) No.484 of 2023
Date :18/03/2024

RK (18/03/2024) 7P / 7C

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