



CRL MP(MD) No.2404 of 2024

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

Friday, the Twenty Third day of August Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

Crl.MP(MD)No.2404 of 2024

in

Crl.A(MD)No.159 of 2024

VIJAY @ KURUVI VIJAY

... APPELLANT/ ACCUSED 1

Vs

THE INSPECTOR OF POLICE
ANNA NAGAR POLICE STATION,
MADURAI DISTRICT.
CR.NO.1950/2021

... 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 on the petitioner appellant passed in SC No.67/2022 on the file of the Learned Sessions Judge Mahila Court Madurai vide order dt 30.01.24 and enlarge the petitioner on bail pending disposal of the criminal appeal.

Prayer in Crl.A(MD)No.159 of 2024:

Pleased to call for the records in S.C.No.67 of 2022, on the file of the Learned Sessions Judge, Mahila Court, Madurai vide order dated 30.01.2024, and set aside the

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order of conviction and sentence.

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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.N.ANANTHAPADMANABHAN, Senior Counsel for M/S.APN LAW ASSOCIATES, for the petitioner and of Mr.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the Sessions Judge, Mahila Court, Madurai, in SC No.67 of 2022, dated 30/01/2024 and enlarge the petitioner on bail, pending disposal of the above said Criminal Appeal.

2.The case of the prosecution brief:-

On 12/11/2021 at about 09.30 pm, the victim girl was kidnapped at the knife point by the accused persons to Anna Nagar Senbaga Thottam. She was subjected to repeated rape by A1 at the knife point. Based upon the occurrence, a case in Crime No.1950 of 2021 was registered by the respondent police for the offences under sections 341, 342, 294(b), 323, 354, 407, 376(D), 363, 366 IPC r/w 4 of TNPHW Act.

3.After completion of the investigation, charge sheet was filed before the Sessions Judge, Mahila Court, Madurai for the offences under sections 341, 294(b), 506(ii), 366 and 376(D) IPC and it was taken on file in SC No.67 of 2022.

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4. On the side of the prosecution, 27 witnesses were examined and 32 documents were marked. Apart from that, 9 materials objects were marked. Arrest Memo was marked as Ex.C1. On the side of the accused, no oral and documentary evidence was adduced.

5. At the conclusion of trial process, the trial court found guilty of the accused for the offences and sentenced them to undergo 20 years RI and to pay a fine of Rs.10,000/-, in default to undergo one year SI for the offence under section 376(D) IPC and sentenced to undergo 10 years RI and to pay a fine of Rs.10,000/-, in default to undergo 1 year SI for the offence under section 366 IPC and sentenced to undergo 2 years RI and to pay fine of Rs.5,000/-, in default to undergo 3 months SI for the offence under section 506(ii) IPC and directed the sentences to run concurrently.

6. Challenging the conviction and sentence, this appeal is preferred by the appellant/A1. Pending appeal, this criminal miscellaneous petition was taken out by the petitioner/A1 seeking suspension of sentence.

7. Heard both sides.

8. The learned Senior Counsel appearing for the petitioner/A1 would submit that PW1 and PW2 turned hostile even during the course of chief examination; PW3 turned hostile at the time of cross examination; Since the petitioner was indulged in various cases, the police gunshot him below the knee; To escape from the injury



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caused to the petitioner, a false complaint has been registered as if the victim girl was subjected to repeated rape; But the FIR does not indicate about gunshot injury suffered by the petitioner; Since the victim girl herself turned hostile, the conviction and sentence passed by the trial court are not sustainable.

9.Per contra, the learned Additional Public Prosecutor would submit that the petitioner is a notorious person involving several cases as indicted in the counter. Most of the cases are robbery, kidnapping, assault, public nuisance, murder, threat, attempt to murder, etc. In some of the cases he was acquitted and some of the cases still pending trial.

10.Reading of the counter filed by the respondent does indicate that the petitioner is not keeping good behaviour, involving several cases including murder case as stated above.

11.Per contra, the learned Senior Counsel appearing for the petitioner would submit that so far as this case is concerned, absolutely, it is a false case foisted only to escape from the consequence of the gunshot injury; Reading of the judgment itself will clearly demonstrate that it is nothing, but a false case.

12.Perusal of the records shows that PW1 turned completely hostile. The statement recorded under section 164 Cr.P.C from her was at the instance and the instruction given by the police, signed in the white paper. PW2 is the relative of PW1.



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He has stated that a proposal was underway to marry PW1. In one of the occasions, they were talking to each other. At that time, police came to the spot, obtained signature in the blank papers. But PW3 during the course of the chief examination supported the case of the prosecution and he has stated that as per PW2's information, they were search on PW1. He witnessed the occurrence over the kidnapping of the victim girl by A1 at the knife point. At that time, PW1 informed them about the rape. During the course of cross examination to some extent, he supported the defence. Only based upon the evidence of PW3, the conviction and sentence was rendered by the trial court. PW6 also supported the case of the prosecution.

13. Whether the evidence of those witnesses are believable or not is a matter to be considered at the time of appeal. How the gunshot injury occurred is also a matter for consideration at the time of main appeal. This does not improve the case of the petitioner for suspending the sentence.

14. Before the Medical Officer-PW19, PW1 informed that she was raped by the accused. But there is no indication of rape in the private part of the PW1. So, these are the matters required to be considered at the time of appeal. However, considering the bad antecedents of the petitioner, this court is not inclined to exercise the discretionary power in favour of the petitioner.



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15. In the result, this criminal miscellaneous petition is dismissed. Since the type set is made ready, the petitioner can argue the main appeal on merits. List the main appeal on 19/09/2024.

sd/-
23/08/2024

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/09/2024
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

ER
TO

1 THE SESSIONS JUDGE,
MAHILA COURT, MADURAI.

2 THE OFFICER INCHARGE,
CENTRAL PRISON, CUDDALORE.

3 THE INSPECTOR OF POLICE
ANNA NAGAR POLICE STATION,
MADURAI DISTRICT.

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



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ORDER
IN
Crl.MP(MD)No.2404 of 2024
in
Crl.A(MD)No.159 of 2024
Date :23/08/2024

SA/SG/SAR. /13.09.2024/7P/5C

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