



Crl.MP(MD)No.3403 of 2024 in Crl.A(MD)No.644 of 2022

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G.ILANGOVAN, J

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This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in S.C.No.73 of 2019, dated 10/09/2022 passed by the District and Sessions Judge, Mahila Fast Track Court, Dindigul District and enlarge him on bail pending disposal of the Criminal Appeal.

2.The case of the prosecution in brief:-

The victim girl was born on 27/06/2004. On 25/08/2019 when she was came out of her house, the accused kidnapped her to Ooty, booked a room in a hotel, was subjected to continuous sexual assault upon her. Because of that, she became pregnant and subsequently, it was aborted. On the basis of the above said occurrence, a case in Crime No.122 of 2019 was registered by the respondent police for the offences under sections punishable under section 363 IPC and section 5(1) r/w 6 of POCSO Act, 2012.

3.After completing the investigation, the respondent police filed a final report for the offence under sections 363 of IPC and sections 5(1) r/w 6 and 5(j) (ii) r/w 6 of POCSO Act, 2012, and the same has been taken cognizance in Special SC No.73 of 2019 by the Sessions Judge, Mahila Fast Track Court, Dindigul.



4.During trial, the prosecution has examined 18 witnesses and exhibited 13 documents. The defence has examined one witness Muthu as D.W.1 and adduced no documentary evidence.

5.The learned Trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the judgment, dated 10/09/2022, finding the accused guilty for the offences under Section 363 of IPC and under Sections 5 (1) r/w 6 and 5(j) (ii) r/w 6 of POCSO Act and sentenced him to undergo 4 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for a period of six months for the offence under Section 363 IPC ; to undergo 20 years Rigorous Imprisonment and to pay a fine of Rs.20,000/- in default, to undergo six months simple imprisonment for the offence under Section 5(1) r/w 6 of POCSO Act and to undergo 20 years Rigorous Imprisonment and to pay a fine of Rs.20,000/- in default, to undergo further six months simple imprisonment for the offence under Section 5(j) (ii) r/w Section 6 of POCSO Act and directed the sentences to run concurrently.

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



7.Heard both sides.

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8.Cr1.MP(MD)No.12475 of 2022 was dismissed by me, on 06/01/2023 while I was sitting in the roster. After change of roster, another attempt was made by the petitioner to get suspension of sentence by filing Cr1.MP(MD)No.4185 of 2023. That was also came to be dismissed by the Coordinate Bench of this court on 20/03/2023. Again after change of roster, this attempt is made by the petitioner seeking suspension of sentence on the ground that ever-since from the date of judgment, he is in custody. According to him, the judgment was pronounced on 10/09/2022 for more than 2 years he is in custody. On that account, he wants suspension of sentence. But for valid reasons, those two petitions came to be dismissed.

9.I find no change of circumstances, except the duration of the custody. Long period of incarceration, though can be a matter for consideration, when the appeal is ripe for trial, the petitioner is at liberty to argue the matter on merits in the appeal itself.

10.I find no reason to enlarge the petitioner on bail by suspending the sentence considering the grievous nature of the accusation made and *prima facie*, it was found to be true, since the victim girl was aged about 14 years



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at the time of the occurrence. So, the offence of this nature requires no consideration for exercising the discretionary power.

11.In the result, this miscellaneous petition is **dismissed.**

30/08/2024

Index : Yes/No

Internet: Yes/No

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To,

- 1.The Sessions Judge,
Mahila Fast Track Court,
Dindigul.
- 2.The Inspector of Police,
Viruveedu Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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