



CRL MP(MD) No.3991 of 2024

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

Tuesday, the Second day of April Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice K.K. RAMAKRISHNAN

CRL MP(MD) No.3991 of 2024

in

CRL A(MD) No.396 of 2021

MURUGAN

... Appellant / Sole Accused

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
DINDIGUL,
DINDIGUL DISTRICT.
(CRIME NO.13/2018)

... 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 me and release the petitioner on bail pending disposal of the main Criminal Appeal before this Honourable Court against the judgment of the Sessions Judge Fast Track Mahila Court Dindigul in Special SC.No.49 of 2018 dated 05.05.2021.

Prayer in CRL A(MD) No.396 of 2021:

To call for the entire records connected with the judgment rendered by the Sessions Judge, Fast Track Mahila Court, Dindigul in Special S.C.No.49 of 2018 dated 05.05.2021 and set aside the same and consequently acquit 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



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of M/S.PRAKASH.R, Advocate for the appellant and of Mr.M.MUTHUMANIKKAM, Government Advocate (Crl. side) on behalf of the Respondent, the Court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Fast Track Mahila Court, Dindigul, in Spl.S.C.No.49 of 2018 dated 05.05.2021 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

2. The learned counsel for the petitioner submitted that the evidence of the prosecution adduced, is not at all sufficient to prove the prosecution case. Further the learned trial Judge ought to have considered that the P.W.5 and P.W.6 has turned hostile. P.W.2, P.W.3 and P.W.7 to P.W.11 were hear say evidence. Further, there is a delay of 6 days in registering the FIR, however, there was no explanation whatsoever given for the said delay. Hence, the prayer to suspend the sentence.

3. The learned Government Advocate (Criminal Side) appearing for the respondent submitted that the learned trial Judge, upon considering all the evidence on records, has rightly convicted the petitioner. Hence, strongly opposed to allow this petition.

4.This Court has considered the rival submissions made by the learned counsel appearing for the petitioner and the learned Government Advocate(Criminal Side) for the respondent and perused the materials available on record.



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5. This petition has been filed to suspend the sentence imposed on the petitioner as a sixth time, his earlier five applications seeking suspension of sentence were dismissed by this Court, lastly, vide order dated 25.04.2023 in CrI.M.P.(MD). No.5683 of 2023, by passing a detailed order, which is as follows:

"2. The case of the prosecution is that on 02.09.2018 at about 05.30 p.m., when the victim girl went to the grocery shop and while she was returning to her house by crossing the railway gate, the petitioner/accused called the victim girl, then he forcibly pulled the victim girl into his hut, that the petitioner had then committed aggravated penetrative sexual assault against the victim girl, that the petitioner threatened the victim girl that he will done away her father and brother if she discloses the occurrence to anyone and that again on 03.09.2018 at about 05.30 p.m., when the victim girl was returning to her house from her school, the petitioner pulled her to his hut and committed aggravated penetrative sexual assault.

3.The respondent police registered a case in Crime No.13 of 2018 for the offences under Section 5(1) (m) r/w



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Section 6 of POCSO Act. After completing the investigation, the respondent police has filed charge sheet against the petitioner/accused for the offences under Section 5(1) (m) r/w Section 6 of POCSO Act.

4.During the trial, the prosecution has examined 18 witnesses as P.W.1 to P.W.18 and exhibited 11 documents as Ex.P.1 to Ex.P.11. The defence has adduced neither oral nor documentary evidence.

5.The learned Sessions Judge, upon considering the evidence adduced and on hearing the arguments of both the sides, has passed the impugned judgment dated 05.05.2021 convicting the petitioner/accused for the offence under Sections 5(1)(m) r/w Section 6 of Protection of Children from Sexual Offences Act, 2012, and sentenced him to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months of simple imprisonment and for the offence under Section 506(i) of IPC, sentenced him to undergo one year if Rigorous Imprisonment and that the above sentences were ordered to be run concurrently.



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Aggrieved by the said judgment of conviction and sentence, the petitioner has preferred the presence Criminal Appeal.

6.No doubt, the petitioner's earlier four applications seeking suspension of sentence were dismissed by this Court, lastly vide order dated 09.01.2023.

7.The learned counsel for the petitioner would submit that the evidence of prosecution adduced, is not at all sufficient to prove the prosecution case, that Ex.P.2-complaint is not a genuine one and the same was fabricated and accordingly, original complaint was suppressed, that the witnesses P.W.5 and P.W.6 had turned hostile and P.W.2, P.W.3, and P.W.7 to P.W.11 were only hearsay witnesses and that P.W.1 in cross examination would admit that the alleged occurrence had happened in the presence of gate keeper, but the prosecution has failed to examine the gate keeper, who is the co-worker of the petitioner/accused.

8.The learned counsel for the petitioner would further submit that though the alleged incident was occurred on 02.09.2018 and 03.09.2018, FIR came to be registered on



9. The learned Government Advocate (Criminal Side) appearing for the state would submit that the trial Court, considering the school certificate and the other evidence produced, has rightly come to a decision that the prosecution proved that the victim girl was born on 03.10.2006 and was below 12 years at the time of alleged occurrence. He



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would further submit that the trial Court, by relying on the evidence of P.W.1 to P.W.4, P.W.7 to P.W.18 and by holding that the evidence of the victim girl is reliable and trustworthy, has specifically decided that the charges levelled against the petitioner were proved.

10.Considering the seriousness and gravity of the offence allegedly proved against the petitioner and taking not of the age of the victim girl and the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner.

11.In the result, this Criminal Miscellaneous Petition is dismissed.”

6. Hence, this Court does not find any new grounds to suspend the sentence imposed on the petitioner, this Criminal Miscellaneous Petition is dismissed.

sd/-
02/04/2024

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/04/2024
Sub-Assistant Registrar
(C.S.I /II /III /IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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SBN
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To

1.The Sessions Judge,
Fast Track Mahila Court,
Dindigul.

2.The Inspector of Police,
All Women Police Station,
Dindigul, Dindigul District.

3.The Superintendent,
Central Prison,
Madurai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER
IN
CRL MP(MD) No.3991 of 2024
in
CRL A(MD) No.396 of 2021
Date :02/04/2024

ED/ VR /SAR- (15/04/2024) 8P / 5C

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