



CRL MP(MD) No.7765 of 2023

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

Tuesday, the Twelfth day of March Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

CRL MP(MD) No.7765 of 2023

in

CRL A(MD)NO. 422 of 2023

KULANTHAISAMY

... APPELLANT/SOLE ACCUSED

Vs

**THE INSPECTOR OF POLICE
SOUTH POLICE STATION,
DINDIGUL CITY.
CR.NO.741/2022**

... RESPONDENT/RESPONDENT

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 petitioner in Spl.S.C.No.38/2020 dated 23.11.2022 passed by the Learned Fast Track Mahila Court, Dindigul and enlarge the petitioner on bail pending disposal of the above appeal.

PRAYER IN CRL A(MD)No. 422 of 2023:

Pleased to call for the records in Spl.S.C.No.38 of 2020 dated 23.11.2022 passed by the Learned Fast Track Mahila Court, Dindigul and set aside the judgment of conviction of sentence.

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 M/S.KARUPPASAMY PANDIYAN.G, Advocate for the petitioner and of MR.R.SIVAKUMAR, Government Advocate (Criminal Side)on behalf of the Respondent, the court made the following order:-

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The petitioner has filed this Criminal Miscellaneous Petition praying to suspend the sentence passed against him by the learned Sessions Judge, Mahila Court (Fast Track Court), Dindigul, in Spl.S.C.No.38 of 2020 dated 23.11.2022 and to enlarge him on bail, pending disposal of the Criminal Appeal.

2. The case of the prosecution is that the accused/petitioner, who is a married person having children, induced the victim girl, who was only aged about 15 years at the time of occurrence, by taking her to the house of one Nagaraj and forcibly indulged in aggravated penetrative sexual assault. Based on a complaint given by the father of the victim girl, the respondent police has registered FIR against the petitioner in Crime No.741 of 2022 for the offences punishable under Sections 363 and 379 of IPC and Sections 5(l) r/w. 6 of 'the Protection of Children from Sexual Offences Act, 2012' [hereinafter referred to as 'POCSO Act' for the sake of brevity] and the same was taken on file before the learned Sessions Judge, Mahila Court (Fast Track Court), Dindigul. The petitioner stands convicted for the offence punishable under Section 363 of IPC and sentenced to undergo R.I. for 4 years with fine of Rs.5000/- with default condition and to undergo R.I. for 2 years with fine of Rs.500/- with default condition for the offence under Section 379 of IPC and for the offence punishable under Section 6 of 'the Protection of Children from Sexual Offences Act, 2012' [hereinafter referred to as 'POCSO Act' for the sake of brevity] to undergo R.I. of

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20 years and to pay a fine of Rs.20,000/- with 6 months Simple Imprisonment in default. He also directed to pay a fine of Rs.25,000/- as a compensation to the victim girl. 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 the accused/petitioner and the victim girl were in love affair and they have stayed together for three days from 16.05.2020. The petitioner has not provided with an opportunity to cross-examine the witnesses including the victim girl. Moreover, the trial Court relied only upon the statement of the victim girl recorded under Section 164 of Cr.P.C which itself is not a substantive piece of evidence. The petitioner has been incarcerated for a prolonged period and hence, the learned counsel prays for suspension of sentence of the petitioner.

4. The learned Additional Public Prosecutor appearing on behalf of the respondent vehemently contended that the accused herein is already a married man and he induced the victim girl and committed an aggravated penetrative sexual assault upon the victim girl. The trial Court meticulously found that the accused is guilty for the offence charged and hence, he opposed to grant the suspension of sentence.

5. Heard the learned counsel appearing for the petitioner and the learned



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Additional Public Prosecutor 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 Sessions Judge, Mahila Court (Fast Track Court), Dindigul, in Spl.S.C.No.38 of 2020 dated 23.11.2022 alone is suspended, subject to the following stringent conditions:-

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 Sessions Judge, Mahila Court (Fast Track Court), Dindigul;

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;



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iii) The petitioner shall appear before the concerned Court daily at 10.30 a.m. and 5.30 p.m., till the disposal of the appeal.

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

v) On breach of any of the aforesaid conditions, the learned Sessions Judge/Trial Court is entitled to take appropriate action against the appellant in accordance with law as if the conditions have been imposed and the appellant released on bail by the learned Sessions Judge/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005) AIR SCW 5560]; and

vi) If the accused thereafter absconds, a fresh FIR can be registered under Section 229-A of IPC.

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

sd/-
12/03/2024

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14/03/2024
Sub-Assistant Registrar
(C.S.I /II /III /IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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TO

- 1 THE SESSIONS JUDGE
FAST TRACK MAHILA COURT, DINDIGUL
- 2 THE INSPECTOR OF POLICE
SOUTH POLICE STATION, DINDIGUL CITY.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.G.KARUPPASAMY PANDIYAN, Advocate (SR-3067[I] dated 12/03/2024)

ORDER
IN
CRL MP(MD) No.7765 of 2023
in
CRL A(MD)NO. 422 of 2023
Date :12/03/2024

PKP/14.03.2024/ 6P/ 6C

Madurai Bench of Madras High Court is issuing certified
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