



CRL MP(MD) No.9721 of 2023

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

Thursday, the Twenty Second day of February Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

CRL MP(MD) No.9721 of 2023

in

CRL A(MD) No.508 of 2023

V.SUBBURAJ

... PETITIONER/ APPELLANT RANK 2

Vs

**THE INSPECTOR OF POLICE
M.PUDUPATTI POLICE STATION,
VIRUDHUNAGAR DISTRICT.
CRIME NO.15/2019.**

... 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 of Imprisonment imposed by the Hon'ble Sessions Judge, Mahila Court, (Fast Track Court), Virudhunagar District at Srivilliputhur in Spl SC No.23/2019 by the Judgment dated 03.05.2023 and enlarge the Petitioner/ Appellant on bail, pending disposal of the above said Criminal Appeal.

Prayer in CRL.A(MD).508/2023:

Pleased to call for the Record and set aside the Judgment and Conviction passed by the Hon'ble Sessions Judge, Mahila Court, (Fast Track Court), Virudhunagar District at Srivilliputhur in Spl.S.C.No.23 of 2019 by the Judgment dated 03.05.2023 and acquit the appellant herein.

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

<https://www.mhc.tn.gov.in/judis>



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M/S.RAJABOOPATHY D, Advocate for the petitioner and of Mr.A.THIRUVADI KUMAR, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

The petitioner has filed this Criminal Miscellaneous Petition praying to suspend the sentence imposed on him by the learned Sessions Judge, Mahila Court (FTC), Virudhunagar District at Srivilliputhur, in Spl.S.C.No.23 of 2019 dated 03.05.2023 and to enlarge him on bail, pending disposal of the Criminal Appeal.

2. It is submitted by the learned counsel for the petitioner that a case has been registered against the petitioner in Crime No.15 of 2019, on the file of the respondent/Inspector of Police, M.Pudupatti Police Station, Virudhunagar District, for the offences punishable under Sections 450, 366(A) of IPC and Sections 3 r/w. 4, 5 (1), 17 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 that the same was taken on file in Spl.S.C.No.23 of 2019 before the learned Sessions Judge, Mahila Court (FTC), Virudhunagar District at Srivilliputhur. The petitioner was convicted and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.2,000/- with three months simple imprisonment in case of default for offence under Section 366(A) of IPC, to undergo 20 years rigorous imprisonment and to pay a fine of Rs.5,000/- with six months simple imprisonment in case of default for offence under Section 6 r/w. 17 of POCSO Act. Challenging the above said conviction and



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sentence, the petitioner has preferred the present Criminal Appeal along with the above Criminal Miscellaneous Petition seeking suspension of sentence.

3. The learned counsel for the petitioner submitted that the petitioner is arrayed as A2. The trial Court failed to note the fact that there is a material contradiction between the prosecution witnesses and exhibits and the medical evidence is being contrary to the material witness. He further submitted that the victim girl had love affair with A1 and the petitioner/ A2 is a friend of A1. He further submitted that the trial Court failed to consider that the evidence of the prosecution is not sufficient to prove the prosecution case and Ex.P.1/complaint is not a genuine one and the same was fabricated one and the real complaint was suppressed. The petitioner is innocent and had no nexus with the said offence. He further pleaded that he is married and having children and has been incarcerated from 03.05.2023. 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 opposed this petition informing that the allegations levelled against the petitioner/accused are serious in nature. At the time of occurrence, A2 kidnapped the victim girl and taken her to relative's residence at Amathoor and committed the offence and hence, prays to dismiss the petition.

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. This Court finds force in the submission of the learned counsel for the petitioner. Admittedly, the victim girl eloped with A1 and both had physical relationship. Based on the complaint lodged by the victim's father, a case was registered on 21.01.2019 and on 27.01.2019, the victim girl was secured. Hence, this Court is of the prima facie view that there are arguable points involved in this Criminal Appeal. Moreover, the petitioner has been incarcerated from 03.05.2023 and further the Criminal Appeal is not likely to be taken up for final hearing in the near future, 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 (FTC), Virudhunagar District at Srivilliputhur, in Spl.S.C.No.23 of 2019 dated 03.05.2023 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 (FTC), Virudhunagar District at Srivilliputhur;



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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 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 i.e., learned Sessions Judge, Mahila Court (FTC), Virudhunagar District at Srivilliputhur.

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

sd/-
22/02/2024

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23/02/2024
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

RM
TO
1 THE SESSIONS JUDGE,
MAHILA COURT (FAST TRACK COURT),
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.



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3 THE INSPECTOR OF POLICE
M.PUDUPATTI POLICE STATION,
VIRUDHUNAGAR DISTRICT.

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

+1 CC to M/s.D.RAJABOOPATHY, Advocate (SR-2226[I] dated 22/02/2024)

ORDER IN
CRL MP(MD) No.9721 of 2023
in
CRL A(MD) No.508 of 2023
Date :22/02/2024

SA/SAR. /23.02.2024/6P/6C

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