



Crl.MP(MD)No.8477 of 2024 in Crl.A(MD)No.683 of 2024

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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 Special SC No.194 of 2022, dated 16/07/2024 passed by the Sessions Judge, Fast Track Mahila Court, Virudhunagar District @ Srivilliputhur and enlarge him on bail pending disposal of the Criminal Appeal.

2.The case of the prosecution in brief:-

The victim girl is aged about 16 and was studying 11th Standard in CEOA School, Kariapatti. On 01/10/2022 at about 08.15 am, the de-facto complainant namely the father of the victim, dropped her in her school. She returned from the school at about 04.00 pm to the house. But thereafter, she was found missing. On the basis of the complaint given by the de-facto complainant, a case in Crime No.217 of 2022 was registered for the offences under section 366 IPC and section 5(1) r/w 6 of POCSO Act.

3.After completion of investigation, final report was filed before the Sessions Judge, Fast Track Mahila Court, Virudhunagar District @ Srivilliputhur and the same was taken on file in Special SC No.194 of 2022.



Crl.MP(MD)No.8477 of 2024 in Crl.A(MD)No.683 of 2024

4.Before the trial Court, on the side of the prosecution, 14 witnesses were examined and 18 documents were marked. Apart from that, 1 material object was marked. On the side of the accused, no oral and documentary evidence was adduced.

5.At the conclusion of the trial process, the trial court found the accused guilty of the offences and sentenced him to undergo 10 years RI and to pay a fine of Rs.10,000/-, in default to undergo RI for one year for the offence under section 366 IPC and sentenced to undergo 20 years RI and to pay a fine of Rs.10,000/-, in default to undergo RI for one year 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.

8.During the course of investigation, the following facts came into light.

9.The accused was frequently visiting the victim



girl's house since he was the friend of her brother. In the course of time, he gave a cell phone, asked her to speak him with the phone. Later, they became lovers. When that was informed to the parents, they warned her stating the petitioner is a brother by relationship. On 28/07/2022 at about 12.00 in the night, she went to the accused house, near the bathroom against her wish, she was subjected to penetrative sexual assault. On 01/10/2022, she was taken by the accused to Dindigul, where stayed about 10 days. During those days, she was subjected to penetrative sexual assault. After sometime, the accused returned to Meenakshipuram for arranging money. In the meantime, as mentioned above, the complaint was given by the father.

10.The learned counsel appearing for the petitioner would submit that the victim girl was aged 17 + at the time of the occurrence, it is a love affair between them; During the course of the investigation and in her 164 Statement, no allegation of sexual assault was made by her. But against the statement of the victim girl, charges were framed as if the petitioner committed penetrative sexual assault. He would further submit that the evidence of the victim is not supported by medical evidence. False case has been foisted. He would rely upon the judgment of the Coordinate Bench of this court in **Mariappan Vs. The**



Crl.MP(MD)No.8477 of 2024 in Crl.A(MD)No.683 of 2024

Inspector of Police (2023-2-L.W.(Crl.)596) to impress upon the court that offences of such nature are being falsely foisted.

11.With regard to the last leg of argument, I am not going to that aspect. It is a matter for consideration at the time of appeal.

12.When it is not a foisted case, even it is admitted by the petitioner during the course of trial before the trial court that it is a love affair between them. But on the date of the alleged occurrence, she was stated to be below 18 years. There is no question of love affair or elopement or consensual physical relationship, etc. The date of birth of the victim is 14/12/2005. The date of occurrence is 28/07/2022, that was the first occurrence of penetrative sexual assault. The second occurrence took place on 01/10/2022, where she was taken by the accused to Dindigul. On the date of the first occurrence namely on 28/07/2022, she was only 16 +. So, the argument that she was about 17 + at the time of the occurrence, it is a love affair cannot be accepted. It is not the age for indulging the sexual activities consensually. So this argument cannot be accepted by this Court.



Crl.MP(MD)No.8477 of 2024 in Crl.A(MD)No.683 of 2024

13.Whether the victim girl was aged about 16 + at the time of occurrence was brought to the notice of the petitioner is the only point to be considered at the time of appeal.

14.Considering the above said facts and also considering the fact that there are arguable points involved in this criminal appeal and further the criminal appeal is not likely to be taken up for final hearing in the near future, this criminal miscellaneous petition is allowed and the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that he shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the Sessions Judge, Fast Track Mahila Court, Virudhunagar District @ Srivilliputhur and on further condition that the petitioner shall appear before the said Court on the first working day of every week at 10.30 am until further orders.

04/09/2024

Index:Yes/No
Internet:Yes/No

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Crl.MP(MD)No.8477 of 2024 in Crl.A(MD)No.683 of 2024

To,

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



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Cr1.MP(MD)No.8477 of 2024 in Cr1.A(MD)No.683 of 2024

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