



CRL MP(MD) No.13249 of 2023

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

Friday, the Twelfth day of January Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.13249 of 2023

IN

CRL A(MD) No.849 of 2023

S.BARATHI GANESH

... PETITIONER/ APPELLANT

Vs

THE INSPECTOR OF POLICE
NATHAM POLICE STATION,
DINDIGUL DISTRICT.
IN CRIME NO.925 OF 2021.

... 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 and enlarge the petitioner / Appellant on bail, conviction imposed on the petitioner / appellant by the judgment dated 12.04.2023 made in Spl S.C No. 69 of 2022 on the file of the Sessions Judge, Fast Track Mahila court, Dindigul pending disposal of the above Appeal.

PRAYER IN CRL.A(MD).849/2023:

Pleased to call for the records relating to the judgment dated 12-04-2023 made in Spl.S.C.No.69 of 2022 on the file of Sessions Judge, Fast Track Mahila Court Dindigul and set aside the same and acquit the Appellant/Accused and allow the above appeal.

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



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Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.JANARTH KUMAR.B, Advocate for the petitioner and of Mr.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

Reserved on : 22.12.2023

Pronounced on : 12.01.2024

The petitioner has filed this petition to suspend the sentence imposed against him in judgment dated 12.04.2023 made in Spl.S.C.No.69 of 2022 on the file of the learned Sessions Judge, Fast Track Mahila Court, Dindigul and to enlarge him on bail pending disposal of the Criminal Appeal.

2.The brief facts of the prosecution case:

The victim girl was aged 17 years at the time of occurrence. The petitioner/accused is working as a loadman. Both are neighbours and they developed love affairs with each other. The petitioner/accused used to visit the victim girl, who used to sleep in the first floor and they had sexual relationship several times and thereby the victim became pregnant. On 30.11.2021 the petitioner/accused took the victim girl to his friend's home at Sivagangai. On 01.12.2021 the victim girl's father lodged a police complaint before the Natham police station. Initially, FIR was registered in Crime No.925 of 2021 as Girl Missing and later altered into Sections 450, 363 of IPC and Section 6 of POCSO Act against the



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petitioner/accused. P.W.13 - Inspector of Police did investigation and laid charge sheet. The petitioner was charged for the offences under sections stated above.

3. To prove the charge, the prosecution examined 13 witnesses as P.W.1 to P.W.13 and marked 19 exhibits as Ex.P1 to Ex.P19. No material object was marked. On the defence side, no witness was examined and no exhibit was marked.

4. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner/accused guilty for the offence under Sections 450 and 363 of IPC and Section 6 of POCSO Act and convicted and sentenced him to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of six months for the offence under Section 450 of IPC and sentenced him to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of six months for the offence under Section 363 of IPC and convicted and sentenced him to undergo rigorous imprisonment for a period of 20 years and to pay a fine of Rs.3,000/-, in default, to undergo simple imprisonment for a period of six months by passing impugned judgment dated 12.04.2023.

5. Aggrieved by the conviction judgment, the petitioner/accused has preferred the present Criminal Appeal before this Court. Along with appeal, the petitioner/accused has filed this petition seeking for suspension of sentence and for



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bail pending disposal of the appeal.

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6. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

7. The learned counsel for the petitioner has submitted that the victim girl was 18 years old at the time of the alleged occurrence. The petitioner and the victim developed love affairs and the victim girl called the petitioner when she used to sleep at first floor and on her call the petitioner went there. During such time, both had consensual sexual relationship several times. There was no sexual abuse made by the petitioner against the victim. When the victim became pregnant they eloped and on hearing the complaint both returned to police station. The victim girl narrated the happenings. Even in 164 Cr.P.C. statement recorded by the learned Judicial Magistrate, the victim girl stated about all the happenings that both fell in love affairs and had consensual sexual relationship. The facts are also discussed by the trial Court in its judgment, but failed to appreciate the same.

8. The learned counsel for the petitioner further submitted that the prosecution witnesses are close relatives and so they are to be treated as interested witnesses. P.W.13 - Investigating Officer herself also admitted that both the petitioner and the victim girl fell in love affairs and were living in relation. Moreover, the petitioner married the victim girl and they have a child. Both side family members are also



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having good contacts. The trial Court has not considered all these aspects and subsequent events. Further the victim girl and mother of the petitioner/accused present before this Court and stated their love affairs and marital relationship. The petitioner is in prison for the past 8 months. The petitioner is the only breadwinner of his family. The petitioner has a fair chance of succeed in the appeal. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner. In support of his arguments relied on the citation reported in 2023 (2) TLNJ 400 (Criminal) (Manikandan Versus The State rep. by The Inspector of Police, Thiruvannamalai) and the judgment dated 09.05.2022 of the Hon'ble Supreme Court passed in CrI.A.No.796 of 2022 (K.Dhandapani Vs. The State).

9. Per contra, the learned Additional Public Prosecutor would submit that the victim girl was aged about 17 years old at the time of alleged occurrence. The victim girl narrated the sexual relationship committed by the accused during investigation. The father and mother of victim as P.W.1 and P.W.2 clearly deposed about the age of the victim and offences committed by the petitioner. DNA Test proved that the petitioner is the biological father of the child given birth by the victim. The subsequent compromise and events cannot be entered into the nature of this offence under the POCSO Act. The Trial Judge has properly appreciated the evidence adduced by the prosecution and has correctly passed the judgment convicting the



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accused as stated therein. The gravity of offence committed by the petitioner has to be looked in this case. Therefore, he strongly opposed to grant suspension of sentence and thereby the petitioner is not entitled to bail.

10. On hearing both side rival arguments and on perusal of records, it is clear that the petitioner was convicted and sentenced to imprisonment as stated supra. During the course of argument, the learned counsel for the petitioner has drawn the attention of the Court to certain grounds of defence that the petitioner and victim fell in love affairs and they had consensual sexual relationship. The learned counsel further draws the attention of the court to the statement of the victim given under Section 164 of Cr.P.C before the learned Judicial Magistrate, which was discussed by the trial Court. Now the fact remains that the petitioner married the victim girl who now became major. The victim girl and the mother of the accused were present before this Court and submitted about the love affairs of petitioner and victim and subsequent events. The victim and mother of accused were identified by the Investigating Officer. Their oral statements shows that the petitioner/accused and the victim lead to happy life.

11. The Hon'ble Supreme Court held in several recent cases that the court cannot shut its eyes to the ground reality and disturb the happy family life of the appellant and the prosecutrix and the same was followed by this Court in 2023 (2)



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TLNJ 400 (Criminal) as contended by the petitioner's counsel. Further, the learned counsel for the petitioner pointed out certain infirmities and inconsistencies in this case and also certain admission in respect of maintaining of the petitioner upon the victim girl as he married her. The fact remains that there are arguable points involved in this criminal appeal and further the criminal appeal is of the year 2023 and the same is not likely to be taken up for final hearing in the near future and that the petitioner/appellant, admittedly husband of the victim and they had a child, is in prison for the past 11 months. In the above circumstances, this Court is inclined to consider the relief sought in this petition and holds that the petitioner herein is entitled to the relief of grant of suspension of sentence.

12. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal on the following conditions:-

(i) The petitioner is directed to be enlarged on bail on condition that the petitioner 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 learned Sessions Judge, Fast Track Mahila Court, Dindigul;

(ii) The sureties shall affix their photographs and Left Thumb



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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; and

iii) The petitioner shall appear before the trial Court on first working day of every week at 10.30 a.m. until further orders and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 of Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

sd/-
12/01/2024

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12/01/2024
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

VSD
TO
1 THE SESSIONS JUDGE,
FAST TRACK MAHILA COURT, DINDIGUL.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
NATHAM POLICE STATION,
DINDIGUL DISTRICT.



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

+1 cc to Mr.B.JANARTH KUMAR, Advocate, SR.No.759 DT.18/01/2024

ORDER
IN
CRL MP(MD) No.13249 of 2023
Date :12/01/2024

SA/SAR. /12.01.2024/9P/5C
Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.