



CRL MP(MD) No.15355 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Monday, the Twenty Second day of January Two Thousand and Twenty Four
PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

CRL MP(MD) No.15355 of 2023
in
CRL A(MD)No.969 of 2023

MARICHAMY
NOW CONFINED AT CENTRAL PRISON,
MADURAI.

... PETITIONER/APPELLANT

Vs

THE INSPECTOR OF POLICE
THIRUTHANGAL POLICE STATION,
VIRUDHUNAGAR DISTRICT.

... 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.SC.No.49/2018 dated 21/9/2023 passed by the Learned Fast Track Mahila Court, Virudhunagar District, Srivilliputhur and enlarge the petitioner on bail pending disposal of the above Appeal.

PRAYER in CRL A(MD)No.969 of 2023:

To call for the records in Spl.S.C.No.49 of 2018 dated 21.09.2023 passed by the Learned Fast Track Mahila Court, Virudhunagar District at Srivilliputhur and to set aside the same.

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 Mr.E.MAREESKUMAR, Advocate for the petitioner and of Mr.R.SIVAKUMAR, Government Advocate(Crl.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 imposed on him by the learned Sessions Judge, Fast Track Mahila Court, Virudhunagar District at Srivilliputhur, in Spl.S.C.No.49 of 2018 dated 21.09.2023 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.517 of 2018, on the file of the respondent/Inspector of Police, Thiruthangal Police Station, Virudhunagar District, for the offences punishable under Sections 366(A) of IPC and 6 read with 17 of 'the Protection of Children from Sexual Offences Act, 2012' [hereinafter referred to as 'POCSO Act' for the sake of brevity] and Section 10 of Prohibition of Child Marriage Act and that the same was taken on file in Spl.S.C.No.49 of 2018 before the learned Sessions Judge, Fast Track Mahila Court, Virudhunagar District. The petitioner was convicted and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.3,000/- with six months rigorous imprisonment in case of default for offence under Section 366(A) of IPC and to undergo 20 years rigorous imprisonment and to pay a fine of Rs.10,000/- with one year rigorous imprisonment in case of default for offence under Section 6 read with 17 of POCSO Act and to undergo 2 years rigorous imprisonment and to pay a fine of Rs.1,000/- with three months



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rigorous imprisonment in case of default for offence under Section 10 of Prohibition of Child Marriage Act. Challenging the above said conviction and sentence, the petitioner has preferred the present Miscellaneous Petition seeking suspension of sentence.

3. The learned counsel for the petitioner submits that the case of the prosecution is that the accused No.1 and the victim girl aged about 16 years had love affair. On the promise of marriage, the victim girl was taken by the accused No.1 in a car bearing Registration No.TN 56 R 5163 and in that car, the petitioner / accused No.2 is a driver. On 06.07.2018, the accused No.1 married the victim girl and the petitioner took them in his car and dropped them at Kovilpatti. Further, the accused No.1 took the victim girl to various places and stayed with her and also had penetrative sexual assault. He further submitted that the age of P.W.2 has not been conclusively proved by the prosecution. The trial Court has erred in accepting the evidence of P.W.2 in toto without any corroboration for the same. Since the evidence of P.W.2 suffers from contradictions and developments, the trial Court ought to have noted the failure on the part of the prosecution in adducing corroborating evidence. The petitioner is an innocent person and he did not commit any offence as alleged by the prosecution. Hence, the learned counsel prays for suspension of sentence of the petitioner.



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4. The learned Government Advocate (Crl. Side) appearing on behalf of the respondent vehemently opposed this petition informing that the allegations levelled against the petitioner/accused No.2 are serious in nature. At the time of occurrence, the victim girl was a minor and the petitioner dropped them in Kovilpatti and asked them to go to Chennai, knowing fully well that the victim is a minor girl and hence, prays to dismiss the petition.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. side) 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 accused No.1 eloped with the victim girl and married her in the presence of the petitioner /accused No.2 and the accused No.1 had made physical relations with the victim girl. Based on the complaint lodged by the victim's father, a case was registered and he has filed Habeas Corpus Petition before this court to find his daughter, but the victim girl returned to home on 13.07.2018. Hence, this Court *prima facie* feels that that there are arguable points involved in this criminal appeal. Moreover, the petitioner has been in incarceration from 21.09.2023 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



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to the relief of grant of suspension of sentence.

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7. Accordingly, this Criminal Miscellaneous Petition is allowed. The sentence imposed by the learned Sessions Judge, Fast Track Mahila Court, Virudhunagar District at Srivilliputhur, in Spl.S.C.No.49 of 2018 dated 21.09.2023 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, Fast Track Mahila Court, Virudhunagar District at Srivilliputhur;

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, Fast Track Mahila Court, Virudhunagar District at Srivilliputhur.



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allowed.

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

sd/-
22/01/2024

/ TRUE COPY /

23/01/2024
Sub-Assistant Registrar ()
Madurai Bench of Madras High Court,
Madurai - 625 023.

RM

TO

- 1 THE SESSIONS JUDGE,
FAST TRACK MAHILA COURT,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.
- 2 THE INSPECTOR OF POLICE
THIRUTHANGAL POLICE STATION,
VIRUDHUNAGAR DISTRICT.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.E.MAREES KUMAR, Advocate (SR-861[I] dated 22/01/2024)



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ORDER
IN
CRL MP(MD) No.15355 of 2023
in
CRL A(MD)No.969 of 2023
Date :22/01/2024

SS/SAR- /23/01/2024/7P/6C

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