



CRL.M.P.(MD)No.16317 of 2023

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

Thursday, the Fourth day of January Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL.M.P.(MD)No.16317 of 2023

in

CRL.A.(MD)No.1016 of 2023

VELLAICHAMY

... PETITIONER/ APPELLANT

Vs

THE INSPECTOR OF POLICE
MUDHUKULATHUR POLICE STATION,
RAMANATHAPURAM DISTRICT.
(CRIME NO.25/2012).

... 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 passed by the Learned Fast Track Mahila Court, (Mahila Neethimandram) Ramanathapuram in SC No.135/2014 dt.11/7/2023 and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

Prayer in CRL.A.(MD)No.1016 of 2023:

To call for the records relating to the judgment passed in S.C.No.135 of 2014 on the file of the Learned Fast Track Mahila Court,(Mahila Neethimandram) Ramanathapuram dated 11.07.2023 and 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.T. VEERAKUMAR, Advocate for the petitioner and of MR.S.MANIKANDAN, Government Advocate on behalf of the Respondent, the court made the following order:-



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Reserved on : 21.11.2023

Pronounced on : 04.01.2024

The petitioner has filed this petition to suspend the sentence imposed against him and release him on bail pending disposal of the Criminal Appeal against the judgment of the learned Sessions Judge, Fast Track Mahila Court (Mahila Neethimandram) Ramanathapuram in S.C.No.135 of 2014 dated 11.07.2023.

2.The brief facts of the prosecution case:

The petitioner/accused is a younger brother of the defacto complainant/PW.1. The victim girl is daughter of PW1 and she is a psychiatric and deaf and dumb. On 09.02.2012 the petitioner/accused committed rape on the victim girl. The PW.1 lodged a complaint before the Mudhukulathur Police Station against the accused. FIR was registered in Crime No.25 of 2012 for the offence under Section 376 of IPC against the petitioner. P.W.15 - Inspector of Police did investigation and laid charge sheet against the petitioner. The petitioner was charged for the offence under section 376 of IPC.

3. To prove the charge the prosecution examined 15 witnesses as P.W.1 to P.W.15 and marked 12 exhibits as Ex.P1 to Ex.P12. On the defence side two witnesses



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were examined, no exhibit was marked. No M.O was marked on both side. After considering both side evidences and both side arguments, the Trial Court has found the petitioner/accused guilty for the offence under Section 376 of IPC and convicted and sentenced him to undergo Rigorous Imprisonment for a period of 8 years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of six months by passing impugned judgment dated 11.07.2023.

4. 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 bail pending disposal of the appeal.

5. Heard both side and perused the records in this Criminal Miscellaneous Petition.

6. The learned counsel for the petitioner has submitted that the petitioner is now aged 64 years old, the defacto complainant and the victim are close relatives. There was property and election dispute between the petitioner and his brother P.W.1 and hence, the petitioner has been falsely implicated in this case by using of the



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victim girl. The victim girl was not examined with the help of any special educator.

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As per medical officers' evidence, the victim girl can identify a person and there was no medical examination regarding rape. There is no eye witness. The Trial Court has considered only chief evidence of prosecution and not considered in toto. The petitioner is suffering old age diseases. The petitioner has not committed any offence as alleged and he is in prison for the past 5 months from the date of judgment. The petitioner has a fair chance of success in the appeal. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner.

7. Per contra, the learned Additional Public Prosecutor would submit that the defacto complainant is a father of the victim girl, who is admittedly deaf and dumb and a psychiatric. It is clear from the doctor's evidence that though the victim was 22 years at the time of occurrence, her mental maturity was only that of 5 years old child, P.W.2 and P.W.5 are ocular witnesses. P.W.2 heard the screaming of the victim child at the time of occurrence and when P.W.2 and P.W.5 eye witnessed the occurrence and saw the petitioner was committing rape. Doctor evidence is clear about the sexual assault who deposed that hymen was torn. The Trial Court has properly appreciated the evidence adduced by the prosecution and has correctly passed the judgment convicting the petitioner as stated therein. The petitioner has



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been awarded sentence of imprisonment to 8 years. Therefore, he strongly opposed to grant suspension of sentence and bail.

8. 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. The petitioner stated that he has not committed any offence. The petitioner stated that upon property dispute and election motive between the petitioner and P.W.1 who are brothers, the petitioner has been falsely implicated in this case. No other reasoned grounds raised for suspension of sentence. It is the case of commission of rape upon a psychiatric and deaf and dumb victim girl. The Trial Court after considering evidence passed conviction judgment.

9. On perusal of records and judgment of the trial Court, it is clear that the evidence of the defacto complainant and victim girl as P.W.2 and P.W.5 was cogent and does not suffer from any infirmity. The contention of the learned counsel for the petitioner raised in this petition is matter for consideration in the appeal. The petitioner is in jail for short period from 11.07.2023 against total period of sentence of 8 years. Therefore, considering the gravity of the offence and the manner in which, the offence committed by the petitioner, this Court is not inclined to suspend the



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sentence at this stage and if he is released on bail, there is a possibility of making trouble to the victim girl in future and also this is not a fit case to exercise the jurisdiction of suspense of sentence.

10. In the result, this Criminal Miscellaneous Petition is dismissed.

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

vsd

TO

- 1.THE JUDGE, FAST TRACK MAHILA COURT,
(MAHILA NEETHIMANDRAM) RAMANATHAPURAM
- 2.THE SUPERINTENDENT,
CENTRAL PRISON,MADURAI.
- 3.THE INSPECTOR OF POLICE
MUDHUKULATHUR POLICE STATION,
RAMANATHAPURAM DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.



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ORDER

IN

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in

CRL.A.(MD)No.1016 of 2023

Date :04/01/2024

RK/VR (09/01/2024) 7P / 5C

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17/07/2023