



Crl.M.P.(MD) No.15642 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.M.P.(MD) No.15642 of 2023

in

Crl.A(MD) No.988 of 2023

SUDHAN

... PETITIONER/ APPELLANT

Vs

THE INSPECTOR OF POLICE
THIRUTHANGAL POLICE STATION,
VIRUDHUNAGAR DISTRICT.
(CRIME NO.517/2018).

... 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 dt.21/9/2023 on the file of the Session Judge, Fast Track Mahila Court, Virudhunagar District at Srivilliputhur and enlarge the petitioner on bail pending disposal of the above appeal.

Prayer in Crl.A(MD) No.988 of 2023:

To call for record and set aside the judgment and sentence passed in Spl.S.C.No.49 of 2018 dated 21.09.2023 on the file of the Sessions Judge, Fast Track Mahila Court, Virudhunagar District @ Srivilliputhur and allow the appeal.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR.A.JAYARAMACHANDRAN, Advocate for the petitioner and of



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MR.R.SIVAKUMAR, Government Advocate(Crl.side) on behalf of the Respondent the court made the following order:-

The petitioner has filed this Criminal Miscellaneous Petition praying to suspend the sentence passed against 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 of IPC and 7 read with 8, 5(1) of 'the Protection of Children from Sexual Offences Act, 2012' [hereinafter referred to as 'POCSO Act' for the sake of brevity] and Section 9 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 of IPC, to undergo 3 years rigorous imprisonment and to pay a fine of Rs.2,000/- with three months rigorous imprisonment in case of default



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for offence under Section 7 read with 8 of POCSO Act 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 5(1) read with 6 of POCSO Act and to undergo 2 years rigorous imprisonment and to pay a fine of Rs.1,000/- with three months rigorous imprisonment in case of default for offence under Section 9 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 while referring the deposition of victim (P.W.2) submits that both the victim and the petitioner were in consensual relationship and they also performed the marriage. 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. Hence, the learned counsel prays for suspension of sentence of the petitioner.

4. The learned Government Advocate (Crl. Side) appearing on behalf of



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the respondent vehemently opposed this petition informing that the allegations levelled against the petitioner/accused are serious in nature. At the time of occurrence, the victim girl was a minor 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 petitioner eloped with the victim girl and married her in the presence of the second accused and 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 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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8. Subject to the above conditions, this Criminal Miscellaneous Petition is allowed.

sd/-
22/01/2024

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

rm

TO

1.THE SESSION JUDGE,
FAST TRACK MAHILA COURT,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR

2.THE INSPECTOR OF POLICE
THIRUTHANGAL POLICE STATION,
VIRUDHUNAGAR DISTRICT.

3.THE SUPERINTEDENT,
CENTRAL PRISON,
MADURAI.

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

+1 CC to M/s.A.JAYARAMACHANDRAN, Advocate (SR-904[I] dated 23/01/2024)



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ORDER

IN

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in

Crl.A(MD) No.988 of 2023

Date :22/01/2024

RK (23/01/2024) 7P / 6C

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