



CRL MP(MD) No.16287 of 2023

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

Monday, the Twelfth day of February Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

CRL MP(MD) No.16287 of 2023

IN

CRL A(MD)No. 703 of 2022

1 K.PALANIVEL

2 B.SANKAR

... APPELLANTS/ACCUSED NO. 5 & 6

Vs

**THE INSPECTOR OF POLICE
NAGAMALAI PUDUKKOTTAI POLICE STATION,
MADURAI DISTRICT
CRIME NO. 12/2012**

... RESPONDENT/COMPLAINANT

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 of Imprisonment imposed by the Learned Sessions Judge, Mahalir Neethimandram, Madurai in S.C No. 180 of 2014 by the Judgment and conviction dt. 03.08.2022 and enlarge the petitioner / Accused on bail pending disposal of the above Criminal Appeal.

PRAYER IN CRL A(MD)No. 703 of 2022:

To call for the records and set aside the judgment and conviction dated 03.08.2022 passed by the Learned Sessions Judge, Mahalir Neethimandram, Madurai in S.C.No. 180 of 2014 and acquit the appellants.



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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 M/S.VELLAICHAMY S, Advocate for the petitioner and of MR.M.MUTHUMANIKKAM, Government Advocate (Criminal Side) on behalf of the Respondent, the court made the following order:-

The petitioners have filed this Criminal Miscellaneous Petition praying to suspend the sentence imposed on them by the learned Sessions Judge, Mahalir Neethimandram, Madurai, in S.C.No.180 of 2014, dated 03.08.2022 and to enlarge them on bail, pending disposal of the Criminal Appeal.

2. The case of the prosecution is that five months prior to the date of the occurrence, the victim's father was hospitalized and was accompanied by her mother. In this backdrop, the accused used to talk with the victim and had sexual intercourse with her on several occasions. On the basis of the information furnished by the victim girl, the case was registered and on completion of the investigation, final report was filed against the accused persons.

3. During the course of trial, on the side of the prosecution, 14 witnesses have been examined and 50 exhibits, apart from that 15 material objects were marked. On the side of the accused, one witness was examined and 4 documents were marked.



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4. Since A1 died during the pendency of the trial, the charge against him abated and all others found guilty and accordingly, convicted A2 to A6 for the offence under section 376 IPC and sentenced them to undergo 10 years Rigorous Imprisonment and also pay a fine of Rs.3,000/-, in default to undergo one year Simple Imprisonment and also convicted them for the offence under section 506(ii) IPC and sentenced them to undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo six months Simple Imprisonment.

5. Against which, the Criminal Appeal has been preferred before this court. Pending Criminal Appeal, the petitioners/A5 & A6 have preferred the present Criminal Miscellaneous Petition.

6. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl. side) appearing for the State and perused the materials available on record.

7. The learned counsel appearing for the petitioners would submit that Since the

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complaint has been given by P.W.1/father of the victim, the same is not reliable as the victim is a minor and ought to have given the said complaint. He would further submit that there is no material evidence supported the case of the prosecution and has not stated that PW5 is suffering from insanity. In so far as these petitioners are concerned, they have been exonerated exclusively from the paternity test and A1 & A4 are father and son. A1 is the paternal uncle of the victim girl and A5 is P.W.1's brother's son and A6 is P.W.1's sister's son and hence, the petitioners are only brothers and the entire family has been implicated in this case without any basis. During the course of investigation, the victim girl delivered a female child on 10.02.2012 and DNA test reveals that the fourth accused Vigneswaran is the biological father of the baby and these petitioners are no way connected with the alleged offence and hence, prays for allowing the petition. He further submitted that A4 in the proceedings under Section 313 Cr.P.C has specifically stated that he had love affair with the victim girl and also intended to marry her and that he alone had committed sexual relationship with her. Despite such an important admission made by A4, the trial Court has failed to consider the same and mechanically recorded the impugned conviction and sentence.

8. The learned Government Advocate (Crl. side) would submit that it is a

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pathetic case that the victim, who is insane was subjected to sexual intercourse by the accused persons on several occasions. So according to him, no indulgence need to be shown to the petitioner. Moreover, in view of the DNA test, A4 had given his explanation in the proceedings under Section 313 Cr.P.C. as if he was in love with the victim girl and was planning to marry her. Such a statement, by no stretch of imagination, can be taken as an evidence to show that the other accused were innocents.

9. On a bare reading of the case reveals that A4 had loved the victim which was not liked by her parents and there was also a panchayat in this regard between the parties. In addition to this, property dispute also prevails.

10. This Court finds force in the submission of the learned counsel for the petitioners and also taking note of the fact that the petitioners have been incarcerated from 03.08.2022 and hence, this Court is of the prima facie view 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 Court is of the considered view that the petitioners herein are entitled to the relief of grant of suspension of sentence.



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11. Accordingly, this Criminal Miscellaneous Petition is allowed. The sentence imposed by the learned Sessions Judge, Mahalir Neethimandram, Madurai, in S.C.No.180 of 2014 dated 03.08.2022 alone is suspended, subject to the following stringent conditions:-

i) The petitioners shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each with two blood sureties each for a like sum to the satisfaction of the learned Sessions Judge, Mahalir Neethimandram, Madurai;

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 petitioners shall appear before the concerned Court daily at 10.30 a.m. and 5.30 p.m., till the disposal of the appeal.

iv) The petitioners shall furnish their residential address and mobile number to the Trial Court ie., learned Sessions Judge, Mahalir Neethimandram, Madurai.

v) The petitioners are directed to pay the fine amount immediately, as directed by the Court below, if any.



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

sd/-
12/02/2024

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13/02/2024
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

RM
TO

- 1 THE SESSIONS JUDGE,
MAHALIR NEETHIMANDRAM, MADURAI.
- 2 THE INSPECTOR OF POLICE
NAGAMALAI PUDUKKOTTAI POLICE STATION,
MADURAI DISTRICT
- 3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.S.VELLAICHAMY, Advocate (SR-1732[I] dated 12/02/2024)

ORDER
IN
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IN
CRL A(MD)No. 703 of 2022
Date :12/02/2024

PKP/13.02.2024/ 7P/ 6C
Madurai Bench of Madras High Court is issuing certified
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