



CRL MP(MD) No.16234 of 2023

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

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.16234 of 2023
in
CRL A(MD)NO.233 of 2023

M.PANDI

... PETITIONER/APPELLANT

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
DINDIGUL
IN CRIME NO.10/2020.

... RESPONDENTS/RESPONDENTS

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to enlarge the petitioner on bail by suspending the sentence imposed on him in respect of Spl.SC.No.15/2021 on the file of the Sessions Judge/Fast Track Mahila Court, Dindigul dated 18/11/2022 above Crl.A.

PRAYER in CRL A(MD)NO.233 of 2023:

To call for records and set aside the conviction passed by the Sessions Judge, Fast Track Mahila Court, Dindigul in Spl.S.C.No.15 of 2021 dated 18/11/2022 and allow this appeal.

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.H.ELANGO, Advocate for the petitioner and of Mr.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-



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Reserved on : 20.12.2023

Pronounced on : 11.01.2024

The petitioner has filed this petition to suspend the sentence imposed against him in Spl.S.C.No.15 of 2021 on the file of the learned Sessions Judge, Fast Track Mahila Court, Dindigul dated 18.11.2022 and to enlarge him on bail pending disposal of the Criminal Appeal.

2.The brief facts of the prosecution case:

The victim girl is an orphan and she has not completed 18 years. The petitioner/accused falsely developed love affairs with her and by telling false promise to marry her, he took her to his house and had sexual relationship and later he tied a thali knowing that she has not completed 18 years. The victim girl became pregnant and gave birth to a child on 10.11.2020. FIR was registered in Crime No.10 of 2020 for the offence under Sections u/s 5 (l), 5(j)(ii) r/w 6 of POCSO Act and Section 9 of Child Marriage Act. P.W.12 - Inspector of Police did investigation and laid charge sheet against the petitioner. The petitioner was charged for the offence under sections 5(l), 5(j)(ii) r/w 6 of POCSO Act and Section 9 of Child Marriage Act.

3. To prove the charge, the prosecution examined 12 witnesses as P.W.1 to P.W.12 and marked 14 exhibits as Ex.P1 to Ex.P14. No M.O was marked. On the defence side, no witness was examined and no exhibit was marked.



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4. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner/accused guilty for the offence under Section 6 of POCSO Act and convicted and sentenced him to undergo rigorous imprisonment for a period of 25 years and to pay a fine of Rs.20,000/-, in default, to undergo simple imprisonment for a period of six months and acquitted the petitioner/accused for the offence under Section 9 of Child Marriage Act by passing impugned judgment dated 18.11.2022.

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 bail pending disposal of the appeal.

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 completed 18 years and both the petitioner/accused and victim developed love affairs with each other and they married and had consensual sexual relationship. The trial Court acquitted the petitioner/accused from the charge for the offence under Section 9 of Child Marriage Act. There is no medical proof produced by the prosecution to show the age of the victim at the time of the alleged occurrence. The



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prosecution relied upon medical opinion which is not permissible and which is without resorting to the procedure under prescribed Rules by relying the judgment of this Court in Crl.A.(MD)No.518 of 2019 dated 18.10.2022. The father of the petitioner/accused is a diabetic patient, who is hospitalized for three months and who is solely depending on the petitioner/accused as his elder brother died on 23.07.2020. The Trial Court concluded only based on the evidence of victim girl. The petitioner is in prison for six months. 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.

8. Per contra, the learned Additional Public Prosecutor would submit that the victim girl was aged below 18 years. She is orphan and she has no parents. P.W2 clearly deposed about these facts. The petitioner is already a married man and he has already married two women and the victim is a third wife. The petitioner is in habit of giving false promise and had sexual relationship. The DNA test conducted and proved that the petitioner/accused is the biological father of the child given birth by the victim. A positive result of DNA test would constitute clinching evidence against the petitioner/accused and relied on the decision reported in **(2017) 4 Supreme Court Cases 393**. He further contended that the judgment relied on by the petitioner in Crl.A.No.518 of 2019 is rendered in appeal after hearing both sides



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and that was rendered for deciding age, but this petition is only for suspension of sentence. Further, the victim was below 18 years is proved by the prosecution by examining medical officers. The Hon'ble Supreme Court held in several cases that 'if the testimony of prosecutrix is found to be reliable by itself may be sufficient to convict the culprit and no corroboration of her evidence is necessary'. In this case, the victim as PW1 clearly deposed about the commission of crime by the petitioner, and hence, the trial Court has correctly appreciated her evidence. Doctor's evidence is clear about the sexual assault. The Trial Judge has properly appreciated the evidence adduced by the prosecution and has correctly passed the judgment convicting the petitioner as stated therein. The petitioner is awarded sentence of imprisonment to 25 years and he is in prison only for few months. Therefore, he strongly opposed to grant suspension of sentence and thereby the petitioner is not entitled to bail.

9. 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 learned counsel for the petitioner stated that the petitioner and the victim girl developed love affairs and they had consensual sexual relationship. The prosecution stated that the victim girl is an orphan and she was subject to sexual relationship by the petitioner/accused under false promise. On perusal of records and judgement of



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the trial Court, it is clear that the evidence of the victim girl as P.W.1, was cogent and does not suffer from any infirmity. The Trial Court came to a conclusion based on the evidence of P.W.1 along with other witnesses which clearly corroborated with each other. The victim girl evidence cannot be rejected in toto as a false one. It is not denied that the victim girl gave birth to a child and DNA tested positive against the petitioner/accused. The petitioner is in jail for a short period from the date of impugned judgment.

10. 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 at this stage and also this is not a fit case to exercise the jurisdiction of suspense of sentence.

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

sd/-

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/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.



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2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, DINDIGUL

3 THE SUPERINTENDENT,
MADURAI CENTRAL PRISON, MADURAI.

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

+1 CC to M/s.H.ELANGO, Advocate (SR-564[I] dated 11/01/2024)

ORDER
IN
CRL MP(MD) No.16234 of 2023
in
CRL A(MD)NO.233 of 2023
Date :11/01/2024

SS/DD/SAR- /19/01/2024/7P/6C

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