



CRL MP(MD) No.16634 of 2023

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

Wednesday, the Eleventh day of September Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.16634 of 2023

in

CRL A(MD) No.1038 of 2023

VIJAYAKUMAR @ VIJAYAN

... PETITIONER/ APPELLANT

Vs

THE INSPECTOR OF POLICE
RETTIYARCHATHIRAM POLICE STATION,
DINDIGUL DISTRICT.
CRIME NO.892/2020

... 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 of Imprisonment imposed by the Mahila Fast Track Court, Dindigul in Spl SC No.106/2020 by the Judgment dt.21.09.2023 and enlarge the Petitioner / Appellant on bail, pending disposal of the above said Criminal Appeal.

Prayer in CRL A(MD) No.1038 of 2023 :

To call for the records and set aside the judgment and conviction dated 21.09.2023, by the Mahila Fast Track Court, Dindigul in Spl.S.C.No.106 of 2020 and acquit the appellant.

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.M.MAHARAJA, Advocate for the petitioner and of MR.M.SAKTHI KUMAR, Government Advocate (Crl.Side) on behalf of the Respondent, the court made the following order:-



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This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the learned Sessions Judge, Mahila Fast Track Court, Dindigul, dated 21.09.2023 in Spl.S.C.No.106 of 2020 and enlarge the petitioner on bail, pending disposal of the above said Criminal Appeal.

2.The learned counsel for the petitioner submitted that the petitioner was convicted by the learned trial judge, for the alleged offence under Section 366 of IPC and sentenced him to undergo five years rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo 3 months simple imprisonment and also convicted for the offences punishable under Section 6 of POCSO Act, 2012 and sentenced him to undergo 20 years rigorous imprisonment and to pay a fine of Rs.3,000/- in default to undergo 6 months simple imprisonment. The sentences were ordered to run concurrently. Set off under Section 428 Cr.P.C. is also ordered.

3.The case of prosecution is that the victim girl, who was examined as PW1, was born on 11.06.2003. At the time of occurrence, she was aged about 18 years. During the course of time, the victim girl become friendly with the accused. They fell in love. But, when the affair came to the knowledge of the parents, she was scolded. She went along with the accused on 31.07.2020 on the promise of marriage by the accused. On that date, there was none in the house of the accused. She was subjected to forcible sexual intercourse. For about 3 days they were staying in that house. In the



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meantime, a complaint was given stating that PW1 is missing. She was taken to Rediyarchathram Police Station. On the basis of the above said occurrence, case was registered in Crime No.892 of 2020 for the offence punishable under Section 363 of IPC and Section 6 of the POCSO Act, 2012 amended as Section 366 of IPC and section 6 of the POCSO Act, 2012. After completing the investigation, final report was filed before the concerned Court and the case was tried in Spl.S.C.No.106 of 2020.

4.To support the case of prosecution 10 witnesses were examined on the side of the prosecution and 21 documents were marked. At the conclusion of the trial process the trial Court found the accused guilty, convicted him and sentenced him as stated above.

5.The learned counsel for the petitioner submitted that even as per the statement of the victim girl, she fell in love with the petitioner and both of them eloped and that was not liked by the parents. Because of that only trouble arose subsequent to that.

6.Per contra, the learned Additional Public Prosecutor would submit that the age of the victim girl is below 18 at the time of occurrence. So the question of love affair and consensual sex may not arise here.

7.Regarding the age of the victim girl, the School Certificate was marked, which shows that the date of birth is 11.06.2003. So it is seen that on the date of occurrence,



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she was aged only 17.1 years. So the evidence by the victim before the trial Court that she was aged about 18 at the time of occurrence is not correct. So the fact remains that there is love affair between the petitioner and the accused.

8. Whether the victim girl was aged 18 years at the time of occurrence was known to the appellant is point for consideration in the appeal. Considering the above said point and also considering the period of incarceration, the suspension of sentence petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal and the petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Mahila Fast Track Court, Dindigul and on further condition that the petitioner shall appear before the said Court once in a week at 10.30 a.m. pending appeal.

sd/-
11/09/2024

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12/09/2024

Sub-Assistant Registrar
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

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1 THE SESSIONS JUDGE, MAHILA FAST TRACK COURT, DINDIGUL.

2 THE INSPECTOR OF POLICE, RETTIYARCHATHIRAM POLICE STATION,
DINDIGUL DISTRICT.

3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

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

+1 CC to M/s.M.MAHARAJA, Advocate (SR-11182[I] dated 11/09/2024)

ORDER

IN

CRL MP(MD) No.16634 of 2023

in

CRL A(MD) No.1038 of 2023

Date :11/09/2024

RS//SAR-(12.09.2024) 5P 6C

Madurai Bench of Madras High Court is issuing
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