



CRL MP(MD) No.17552 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.17552 of 2023

IN

CRL A(MD)No. 706 OF 2022

NAGAPANDI

... APPELLANT/ ACCUSED NO.2

Vs

**THE INSPECTOR OF POLICE
NAGAMALAIPUDHUKOTTAI POLICE STATION,
MADURAI.**

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 imposed on the appellant/accused no.2 passed in SC.No.180/2014 on the file of the learned Sessions Judge, Mahalir Neethimandram, Madurai, dated 03.08.2022 and enlarge him on bail pending disposal of the criminal appeal.



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PRAYER IN CRL A(MD)No. 706 of 2022:

To call for the records in S.C.No. 180 of 2014 on the file of the Learned Sessions Judge, Mahalir Neethimandram, Maudrai and set aside the sentence and conviction awarded to A2 by the order dated 03.08.2022.

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.S.SRIKANTH, Advocate or M/S.APN LAW ASSOCIATES for the appellant and of MR.M.MUTHUMANIKKAM, Government Advocate (Criminal 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 imposed on him by the learned Sessions Judge, Mahalir Neethimandram, Madurai, in S.C.No.180 of 2014, dated 03.08.2022 and to enlarge him 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

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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.

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 to 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 petitioner/A2 has preferred the present Criminal Miscellaneous Petition.

6. 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.

7. The learned counsel appearing for the petitioner would submit that Since the complaint has been given by P.W.1/father of the victim, the same is not reliable as the victim is a major and ought to have given the said complaint. He would further

submit that no material evidence supported the case of the prosecution and has also



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not stated that PW5 is suffering from insanity. In so far as this petitioner is concerned, he has been exonerated exclusively from the paternity test. 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 this petitioner is 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 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



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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 petitioner and also taking note of the fact that the petitioner has been incarcerated from 03.08.2022, 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.

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 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, 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;

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iii) The petitioner 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 petitioner shall furnish his residential address and mobile number to the Trial Court i.e., learned Sessions Judge, Mahalir Neethimandram, Madurai.

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
NAGAMALAIPUDHUKOTTAI POLICE STATION, MADURAI.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.



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+1 CC to M/s.M/S.APN LAW ASSOCIATES, Advocate (SR-1705[I] dated 12/02/2024)

ORDER

IN

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IN

CRL A(MD)No. 706 OF 2022

Date :12/02/2024

PKP/13.02.2024/ 7P/ 6C

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