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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27-02-2025

CORAM

THE HONOURABLE MR JUSTICE B.PUGALENDHI

CRL MP(MD) NO. 4935 of 2024

IN

CRL A(MD) NO. 390 of 2024

Saravanakumar
S/o Palapandi,
No. 2/937 Muthuramalingapuram colony,
Sivakasi, Virudhunagar District. Petitioner(s)

Vs

The Deputy Superintendent of Police
Sivakasi Sub Division, AWPS,
Sivakasi, Virudhunagar District.
[Crime No. 16/2022] Respondent(s)

Prayer : This Criminal Miscellaneous Petition is filed under Section 389(1) of Criminal Procedure Code to to suspend the sentence imposed on the petitioner in Spl.S.C.No.167 of 2022 dated 21.03.2024 on the file of the Fast Track Mahila Court, Virudhunagar district at Srivilliputhur and enlarge the petitioner on bail pending disposal of the appeal.

For Petitioner(s) : Mr.AK.Azagar Sami
For Respondent(s) : Mr.P.Kottaichamy, Government Advocate (Crl Side)

ORDER

The petitioner an accused in Spl SC.No.167 of 2022 on the file of the Fast Track Mahila Court, Virudhunagar was found guilty, convicted and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, one month simple imprisonment for the offence under Section 354(A) of IPC and one year

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rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo one month simple imprisonment for the offence under Section 12 of the POCSO Act.

2. As against the conviction, the petitioner has filed an appeal in CrlA(MD) No.390 of 2024 and the appeal has been admitted by this Court. Along with the appeal, the petitioner has filed this miscellaneous petition to suspend the sentence pending the appeal.

3.The learned counsel for the petitioner submits according to the prosecution the Ex.P1 complaint was lodged on 07.10.2022, but PW1 admitted in her cross examination that on 06.10.2022 she has lodged the complaint before the Sivakasi East Police Station and the police gave CSR receipt and thereafter she went to All Women Police Station, Sivakasi and lodged the complaint. PW2 victim in her statement admitted that on 05.10.2022 itself she went along with PW1 to Sivakasi East Police Station and lodged the complaint. The two earlier complaints have been suppressed. Therefore, Ex.P1 complaint is a concocted one. He further submits that the victim did not know the accused, but no identification parade was conducted to identify the accused. Moreover, as per Section 42 of the POCSO Act, an accused cannot be convicted under Section 354(A) of IPC and under Section 12 of the POCSO Act simultaneously. Therefore, he prays that the sentence be suspended pending the appeal.

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4.The learned Government Advocate (Crl Side) submits that the trial Court has considered the prosecution witnesses and the documents and rightly imposed conviction on the petitioner. Therefore, he objects to suspend the sentence pending the appeal.

5.This Court considered the rival submissions made and perused the material placed on record.

6.Considering that the petitioner is having some arguable points in the main appeal and the appeal could not be taken up for final disposal immediately, this Court is inclined to suspend the sentence pending the criminal appeal.

7. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the criminal appeal and the petitioner is ordered to be enlarged on bail on executing a bond for Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Fast Track Mahila Court, Virudhunar District @ Srivilliputhur and he shall report before the trial Court daily at 10.30pm.

sd/-
27/02/2025

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Sub-Assistant Registrar (C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

DSK

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TO

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

2 THE DEPUTY SUPERINTENDENT OF POLICE,
SIVAKASI SUB DIVISION, AWPS,
SIVAKASI, VIRUDHUNAGAR DISTRICT.

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

ORDER
IN
CRL MP(MD) NO. 4935 of 2024
IN
CRL A(MD) NO. 390 of 2024
Date :27/02/2025

RS/GSV/SAR-(28.02.2025) 4P 4C
Madurai Bench of Madras High Court is issuing
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