



Crl.MP(MD) No.11290 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.MP(MD) No.11290 of 2024
in Crl.A(MD) No.863 of 2024

Palsamy

... Petitioner

Vs.

State of Tamil Nadu
Represented by
the Inspector of Police,
All Women Police Station,
Pudukottai,
Pudukottai District,
(Crime No.4 of 2020)

... Respondent

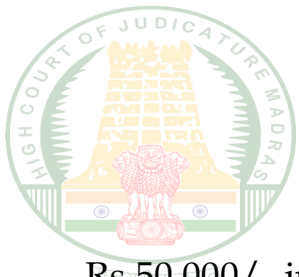
Prayer: Petition filed under Section 430 (1) of BNSS to suspend the sentence of imprisonment imposed dated 30.09.2024, altered the sentence by memorandum dated 07.10.2024 made in SC.No.116 of 2021 on the file of the Sessions Judge, Mahila Court, Pudukottai and enlarge the petitioner on bail pending disposal of the appeal.

For Petitioner : Mr.S.Deenadhayalan

For Respondent : Mr.P.Kottaichamy,
Government Advocate (Crl Side)

ORDER

The petitioner is an accused in SC.No.116 of 2021 on the file of the Mahila Court, Pudukottai and by judgment dated 30.09.2024 he has been found guilty, convicted and sentenced to undergo 7 years rigorous imprisonment with a fine of



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Rs.50,000/- in default to undergo 1 year rigorous imprisonment for the offence under Section 376 IPC and 1 year rigorous imprisonment with a fine of Rs.10,000/- in default to undergo 2 months rigorous imprisonment for the offence under Section 417 IPC. Subsequently, the trial Court having felt that the minimum period of punishment for the offence punishable under Section 376 IPC is 10 years, has suo motu enhanced the sentence from 7 years to 10 years for the offence under Section 376 IPC on 07.10.2024. As against the conviction and the sentence imposed by the trial Court, this petitioner has filed an appeal before this Court in Crl.A(MD) No.863 of 2024 and the same has been admitted by this Court. The petitioner has also moved this petition to suspend the sentence.

2.The learned Counsel for the petitioner submits that the necessary ingredients to constitute an offence punishable under Sections 376 and 417 of IPC are not available. It is purely a consensual sexual intercourse and it will not fall under Sections 376 and 417 IPC, which has been settled by the Hon'ble Supreme Court in a number of cases. He further submits that the date of occurrence is 31.01.2020, however the complaint was lodged on 26.02.2020, FIR was registered on 06.03.2020 and the statement under Section 164(5) CrPC was recorded only on 23.03.2020. As per Section 164-A of CrPC the victim girl has to be examined within 24 hours, whereas in



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this case, the victim girl was examined by the doctor on 07.03.2020. Further the proviso under Section 154 CrPC has not been complied with.

3.He further submits that even if the prosecution case is admitted, there is no evidence to prove the charge and there is no independent witness examined and when PW1 has stated that one Ramya, college Staff, defacto complainant's mother and other villagers were aware of the love affair between the petitioner and her, none of these persons has deposed the same before the Court. The alleged occurrence is said to have taken place in a public park, but no employee of the park has been examined. The trial Court has relied on Ex.P9 – form 95, Ex.P10 Pen Drive and Ex.P11 printed copies of the files from the Pen drive, but these documents cannot be legally valid documents as per Section 65-A and 65-B of the Indian Evidence Act. He also submits that the trial Court ought not to have enhanced the sentence, when there is a bar under Section 362 CrPC and as against the settled position of law. Further the previous complaint has been suppressed and there is inordinate delay in each and every stage of the prosecution. Therefore, the learned Counsel prayed that the sentence be suspended pending the appeal.

4.The learned Government Advocate appearing for the respondent submits that



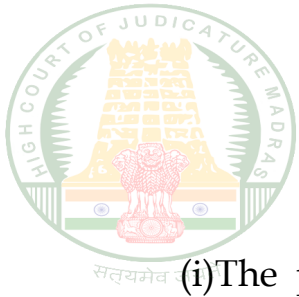
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the petitioner by promising to marry the victim girl had physical relationship with her, but later on married another woman and the trial Court has considered the prosecution witnesses and the documents and rightly convicted the petitioner. The trial Court has enhanced the sentence only after issuing notice to the petitioner, there is no mistake and it need not be given importance.

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

6.The petitioner has raised certain arguable points, which can be considered only during the final hearing of the appeal. However the appeal could not be taken up for final hearing for want of time. Considering the points raised by the petitioner and for the reason that the appeal could not be taken up immediately, the petitioner's period of incarceration this Court inclined to allow this petition.

7.Accordingly this petition is allowed and the substantive sentence of imprisonment imposed on the petitioner alone is suspended pending disposal of the criminal appeal on the following conditions:



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(i) The petitioner is ordered to be enlarged on bail on executing a bond for Rs.25,000/- (Rupees twenty five thousands) with two sureties each for a like sum, to the satisfaction of the Sessions Judge, Mahila Court, Pudukottai.

(ii) The petitioner shall report before the respondent police on the first working day of every month.

sd/-
21/04/2025
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/04/2025
Sub-Assistant Registrar (VIGILANCE)
Madurai Bench of Madras High Court,
Madurai - 625 023.

DSK

To

1.THE SESSIONS JUDGE,
MAHILA COURT,
PUDUKOTTAI.

2.THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
PUDUKOTTAI,
PUDUKOTTAI DISTRICT,

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



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4. THE SUPERINTENDENT,
CENTRAL PRISON,
TRICHY.

+1. C.C. to S.DEENADHAYALAN Advocate SR.No.4439(I) DT.21.04.2025

ORDER
IN
CRL MP(MD) No.11290 of 2024
Date :21/04/2025

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Madurai Bench of Madras High Court is issuing
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