



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

Friday, the Twelfth day of January Two Thousand Eighteen

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PRESENT

**The Hon`ble Mr.Justice A.M.BASHEER AHAMED**

**CRL MP (MD) No.8744 of 2017**

**IN**

**CRL A (MD) No.387 of 2017**

MADASAMY

... PETITIONER/APPELLANT

Vs

THE STATE REP.BY,  
THE INSPECTOR OF POLICE,  
ALL WOMEN POLICE STATION,  
MADURAI SOUTH.  
CRIME NO.7/2013

... RESPONDENT/COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence imposed by the Learned Sessions Judge, Mahalir Neethimandram, Madurai in S.S.C.No.5/2014 dated 08/09/2017 and pass such other orders as this Honourable Court.

**Order :** This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.M.SHAKUL HAMEED, Advocate for the petitioner and of M/S.PRABHU RAMACHANDRAN, Government Advocate (Crl.Side) on behalf of the Respondents the court made the following order:-

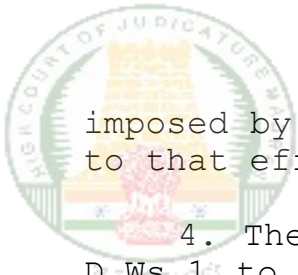
The accused in Spl. Sessions Case No.5 of 2014, on the file of the learned Sessions Judge, Mahalir Neethimandram, Madurai, while challenging his conviction and sentence, seeks appeal bail under Section 389(1) Cr.P.C.

**2.** After trial, he has been convicted and sentenced as under:

| Conviction                                                                | Sentence                                              |
|---------------------------------------------------------------------------|-------------------------------------------------------|
| Section 354 IPC.                                                          | 1 Year R.I., + Fine of Rs.1000/- i/d<br>3 Months S.I. |
| Section 8 of Protection of<br>Children from Sexual<br>Offences Act, 2012. | 4 Years R.I., + Fine of Rs.1000/-<br>i/d 1 Year S.I.  |

<https://hcservices.ecourts.gov.in/hcservices/>

**3.** The petitioner has been confined in Central Prison, at Madurai from the date of Judgment ie., on 08.09.2017. Fine amount



imposed by the trial Court was paid and a receipt is also produced to that effect.

4. The prosecution examined P.Ws.1 to 9 and marked Exs.P1 & 2. D.Ws.1 to 3 were examined by the accused. The victim girl, aged about 16 years on the date of occurrence, was examined as P.W.1. Her father died. Her mother remarried one Murugan, who got already married and has a son by name Shanmugavel. The mother of the victim was examined as P.W.2. Since P.W.2 got remarried, the victim girl and his brother viz., Ajith were residing in the house of P.W.1's maternal aunt Palaniammal. The petitioner / accused is the son of said Palaniammal. It is stated that the petitioner used to come to her house and used to keep his hands on the shoulders of P.W.1 and committed sexual assault. It is admitted that P.W.1 was given complaint against 2 persons one among them is the petitioner herein and another person viz., Thavamani, who is juvenile and the case against the juvenile was ended in acquittal by the Juvenile Justice Board. P.W.1 during evidence states that the said Thavamani as well as the petitioner herein used to commit sexual assault by inserting their hands into the dress worn by the victim girl and touching her chest. P.W.1 has given a complaint through Child Welfare Committee to the Police and the case was registered.

5. The learned counsel appearing for the petitioner / appellant would contend that P.W.1 / victim girl has given a complaint against one Thavamani also, who is a juvenile, and the said case was tried by the Juvenile Justice Board, Madurai and he was acquitted from the charges, as the charge has not been proved by the prosecution. In this case also. The same accusation was made against the petitioner herein, which was also not proved by the prosecution. Except P.W.1 / victim girl, there is no other evidence to witness the occurrence, as alleged by P.W.1 in this case. He would further submit that the petitioner is having a prima facie case in this appeal, since same charges framed against the co-accused are not proved before the Juvenile Justice Board by the prosecution and the co-accused was also acquitted.

6. The learned Additional Public Prosecutor appearing for the respondent would submit that the trial Court has rightly convicted the accused on appreciation of evidence adduced by the prosecution and the petitioner is not having any prima facie case in this appeal. However, the learned Additional Public Prosecutor has not raised any serious objection in respect of alleged allegation / harassment made by the accused herein.

7. On perusal of the Judgment the trial Court, the trial Court has relied the only evidence of P.W.1 alone for convicting the petitioner / accused. There is no other eyewitnesses in respect of the alleged sexual harassment made by the petitioner herein. The trial Court has invoked Section 29 of the POCSO Act regarding the presumption. The trial Court does not believe the evidence of the defence side.



8. In the facts and circumstances, perusing the impugned Judgment and the materials on record and the allegations made in respect of misbehavior done by the petitioner herein against the victim girl, who is aged about 16 years at the time of occurrence and also who is close relative of the petitioner herein, I am of the view that certain eminently arguable points are involved in this criminal appeal. They are required to be examined in detail in the main criminal appeal. Further, it will take some time for the disposal of the criminal appeal.

9. On considerations, ordered as under:

- (i) Appeal bail granted.
- (ii) Substantial sentence alone is suspended on condition that the petitioner shall execute a bond for Rs.15,000/- (Rupees Fifteen thousand only) with two sureties for the like sum each to the satisfaction of the learned Special Judge/ Mahalir Needimandram, Madurai.
- (iii) The petitioner shall appear before the said Court on the first working day of every English Calendar Month at 10.30 a.m., until further orders.

sd/-  
12/01/2018

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

TO

- 1 THE SESSIONS JUDGE, MAHALIR NEETHIMANDRAM, MADURAI.
- 2 THE INSPECTOR OF POLICE,  
ALL WOMEN POLICE STATION, MADURAI SOUTH, MADURAI.
- 3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI
- 4 THE ADDITIONAL PUBLIC PROSECUTOR  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. C.C. to M/S.M.SHAKUL HAMEED Advocate SR.No.724

ORDER IN  
CRL MP (MD) No.8744 of 2017  
IN  
CRL A (MD) No.387 of 2017  
Date : 12/01/2018