



IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Criminal Jurisdiction )

Friday, the Tenth day of December Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice A.D.JAGADISH CHANDIRA

CRIMINAL MISCELLANEOUS PETITION No.12139 of 2021

in Cr1.A.No.520 of 2021

PACHIAPPAN

[ PETITIONER/ACCUSED ]

Vs

STATE REP BY  
THE INSPECTOR OF POLICE,  
METTUR ALL WOMEN POLICE STATION,  
METTUR DAM,  
SALEM DISTRICT.  
CRIME NO. 5 OF 2018.

[ RESPONDENT ]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to suspend the sentence imposed on petitioner/Appellant by the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Salem in Special S.C.No.103 of 2019 by judgment dated 20/09/2021 and enlarge the petitioner on bail, pending disposal of the above Cr1.A.No.520 of 2021.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.M.R.JOTHIMANIAN, Advocate for the petitioner and of PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

This Criminal Miscellaneous Petition has been filed by the Petitioner/Accused, seeking suspension of sentence of imprisonment, imposed by the judgment dated 20.09.2021 in Special S.C.No.103 of 2019 by the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Salem.

2. In and by both the impugned judgement, the Petitioner/ accused was convicted for the offence under POCSO Act and sentenced to undergo 4 years R.I. And fine of Rs.20,000/- in default to undergo six months S.I.



3. Learned counsel for the petitioner would submit that the trial court failed to take into consideration the contradiction between the witnesses and the improvements made by the witnesses. Even as per the prosecution, 164 Cr.P.C. Statement was recorded from the victim girl and in that statement, the victim has only stated that the petitioner had attempted to molest her whereas an exaggerated evidence was given as if the petitioner called the victim inside the shop and molested her. It is the further case of the prosecution that the victim had gone to the shop on the request of her aunty who is the elder sister of P.W.1 for purchase of betel leaves and nuts whereas the aunty of the victim was examined as P.W.4 and she has not supported the case of the prosecution. Further, the trial court also failed to take into consideration the previous enmity between the parties.

4. According to the learned counsel for the Petitioner/accused, there are arguable points available in the Criminal Revision Case, which is not likely to be taken for final hearing in the near future and the Petitioner/accused has got a fair chance of succeeding in the Criminal Revision Case and hence, the sentence imposed against the Petitioner/Accused may be suspended and the Petitioner may be exempted from surrendering before the Trial Court.

5. Per contra, Mr.S.Sugendran, learned Government Advocate (Criminal side) would submit that it is a case where the petitioner was running a shop and had called the victim inside his shop and had touched her inappropriately.

6. Heard the learned counsel for the petitioner and perused the materials on record.

7. In this case, P.W.4, who is elder sister of P.W.1. and aunty of the victim had not supported the case of the prosecution. Further, in the statement recorded under section 164 of Cr.P.C., the victim has only stated that an attempt was made by the petitioner to molest her. Considering the facts and circumstances of the case and also considering the submissions of the learned counsel for the petitioner, this Court is of the view that the sentence of imprisonment can be suspended on certain conditions. Accordingly, till the disposal of the Criminal Revision Case, the relief of suspension of sentence and bail are granted, on the following conditions :-

a) The petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only), with two sureties, each for a like sum to the satisfaction of the the learned Sessions Judge, Special Court for Exclusive Trial of cases under POCSO Act, Salem. .



b) The petitioner on his release from prison shall stay at Salem and appear before the learned Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Salem on every Monday at 10.30 a.m. until further orders. It is made clear, the petitioner shall not enter into the jurisdictional limits of the respondent police station.

(c) on breach of the aforesaid condition, the learned Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560];

(d) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

8. The Criminal Miscellaneous Petition is ordered accordingly.

-sd/-  
10/12/2021

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)  
High Court, Madras - 600 104.

TO

1 THE SESSIONS JUDGE,  
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES  
UNDER POCSO ACT, SALEM.

2 THE SUPERINTENDENT,  
CENTRAL PRISON, COIMBATORE.

3 THE INSPECTOR OF POLICE,  
METTUR ALL WOMEN POLICE STATION,  
METTUR DAM, SALEM DISTRICT.



4 THE PUBLIC PROSECUTOR  
HIGH COURT, MADRAS.

+1 C.C. to M/S.M.R.JOTHIMANIAN Advocate on payment of necessary  
charges SR.NO.14474

Order

in  
CRL MP.12139/2021  
in  
CRL A.520/2021

Date :10/12/2021

From 7.2.2001 the Registry is issuing certified  
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RW 10/12/2021