



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

Monday, the First day of March Two Thousand and Twenty One

PRESENT

The Hon`ble Mrs.Justice R.THARANI

Crl. MP(MD)No.1180 of 2021

in

Crl A(MD)No.71 of 2021

MAARIKALAI

... PETITIONER/APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
SIVAKASI, VIRUDHUNAGAR DISTRICT.
(CRIME NO.7/17)

... RESPONDENT/RESPONDENT

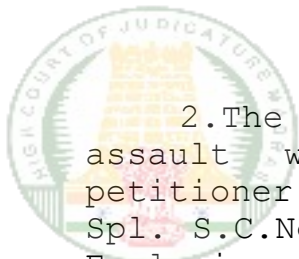
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence of imprisonment in Spl.S.C.No.12/2018 dated 15.12.2020 on the file of the Learned Sessions Judge, Special Court for Exclusive Trial of POCSO Act Cases, Virudhunagar District at Srivilliputhur and enlarge the Petitioner/Sole Accused on bail, till the disposal fo the Criminal Appeal.

Prayer in Crl A(MD)No.71 of 2021:

pleased to admit this appeal and call for the records relating to the Judgment dated 15.12.2020 in SPL.SC.No.12 of 2018 on the file of the Sessions Judge, Special Court for Exclusive Trial of POCSO Act Cases, Virudhunagar District at Srivilliputhur, and set aside the same by acquitting the appellant and allow this Criminal Appeal.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.G.KARUPPASAMY PANDIAN, Advocate for the petitioner and of Mrs.S.BHARATHI, Government Advocate on behalf of the Respondent, the Court made the following order:-

This petition has been filed to suspend the sentence imposed by the Sessions Judge, Special Court for Exclusive Trial of POCSO Act Cases, Virudhunagar District at Srivilliputhur, in Spl.S.C.No.12 of 2018 dated 15.12.2020 till the disposal of the appeal.



2.The case against the petitioner is that he committed sexual assault with two minor girls. A case was registered against the petitioner in Crime No.7 of 2017 and the same was taken on file as Spl. S.C.No.12 of 2018 before the Sessions Judge, Special Court for Exclusive Trial of POCSO Act Cases, Virudhunagar District at Srivilliputhur,, found the petitioner guilty under Section 363 and 506(i) I.P.C. and Section 9(m) r/w. Section 10 (2 counts) POCSO Act, 2012. The petitioner was convicted under Section 363 I.P.C and was sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo a further period of six months simple imprisonment and the petitioner was convicted under Section 9(m) r/w. Section 10 (2 counts) POCSO Act and was sentenced to undergo five years rigorous imprisonment for each count and to pay a fine of Rs.25,000/- each count, in default, to undergo a further period of one year simple imprisonment and the petitioner was convicted under section 506(i) I.P.C. and was sentenced to undergo one year simple imprisonment. Against the said conviction and sentence the petitioner filed an appeal in Crl.A.(MD)No.71 of 2021. Along with the Appeal, he has filed this petition for suspension of sentence.

3.On the side of the petitioner, it is stated that charge sheet was filed only under Section 366-A I.P.C. and Section 5(m) r/w. Section 6(2) of POCSO Act, 2012 and Section 506(i) I.P.C.. But, the trial Court convicted the petitioner under Section 363 I.P.C and Section 9(m) r/w. Section 10 (2 counts) of POCSO Act and Section 506 (I) I.P.C.. No opportunity was given to the petitioner after the alteration of the charges. The petitioner was not given opportunity to cross-examine the witnesses, after the framing of altered charges. There was no injury on the body of the victims. The Doctor has deposed that there will be injuries on the body of the victims as preliminary sexual organs were not developed. The victims were not examined by the woman police, which is against the procedure laid in Section 24 of POCSO Act. The evidence of victims reveals that P.W.6 informed the police and brought the police, but, whereas, P.W.1 was cited as the complainant. The petitioner is 64 years old, having physical ailments and he is in custody for the past 72 days. The age of the victims was not proved by the prosecution. Birth certificate of the victims were not marked by the prosecution and there are much more points for consideration in the main Appeal and prayed the sentence to be suspended.

4.On the side of the respondent, it is stated that the offence is serious in nature. The prosecution has examined 16 witnesses (P.W.1 to P.W.16 and marked 19 documents (Ex.P1 to Ex.P19) and 6 material objects (M.O.1 to M.O.6). 164 (5) Cr.P.C. Statements of the victims were marked as Ex.P17 and Ex.P18. Accident Register of the victims were marked as Ex.P7 and Ex.P8. The prosecution has proved the case beyond all reasonable doubts. The trial Court rightly convicted the petitioner and prayed the petition to be



5.The petitioner has not attached any documents to show that fine amount was already paid by the petitioner. Hence, the petitioner is directed to pay the fine and then to file a petition for suspension of sentence. Hence, this petition is disposed of with liberty to file a fresh petition.

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sd/-
01/03/2021

/ TRUE COPY /

/ /2021

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

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1.THE SESSIONS JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF POCSO ACT CASES,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.

2.THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
SIVAKASI, VIRUDHUNAGAR DISTRICT.

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

COPY TO: THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.1180 of 2021
in
Crl A(MD)No.71 of 2021
Date :01/03/2021

Ls
AE/SMA/SAR-I (15/03/2021) 3P / 6C