



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

Wednesday, the Twenty Fourth day of February Two Thousand and
Twenty One

WEB COPY

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) No.1515 of 2021
in Crl.A.(MD)No.356 of 2020

K.RAJKUMAR MUTHUPANDI

... PETITIONER/ APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
SRIVAIKUNDAM,
THOOTHUKUDI DISTRICT.
CRIME NO.18 OF 2018.

... 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 imposed on the petitioner by the Special Court for Exclusive Trial of Cases under the POCSO Act, Thoothukudi in Special Sessions Case No.34 of 2019 by the judgment dated 23.11.2020 and enlarge the petitioner on bail pending disposal of the above appeal.

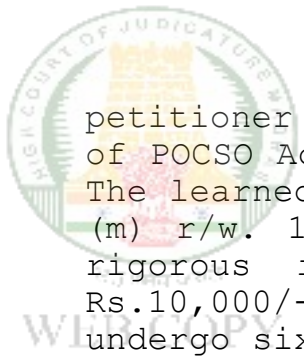
Prayer in Crl.A.(MD)No.356 of 2020:

To allow this appeal and set aside the judgment dated 23.11.2020 passed in Special Sessions Case No.34 of 2019 on the file of the Special Court for Exclusive Trial of Cases under the POCSO Act, Thoothukudi.

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.N.PRAGALATHAN, Advocate for the petitioner, While admitting the Criminal Appeal, the court made the following order:-

This petition has been filed to suspend the sentence imposed by the learned Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thoothukudi in Spl.S.C.No.34 of 2019, dated 23.11.2020, till the disposal of the appeal.

2.The alleged offence against the petitioner is that the petitioner who worked as a teacher in a private school, misbehaved with three students in the school. A case was registered against the



petitioner in Crime No.18 of 2018 under Sections 9(f), 9(m) r/w. 10 of POCSO Act and the same was taken on file as Spl.C.No.34 of 2019. The learned Judge found the petitioner guilty under Sections 9(f), 9(m) r/w. 10 of POCSO Act and sentenced him to undergo five years rigorous imprisonment for each count and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) for each count in default to undergo six months rigorous imprisonment for each count. Against the conviction and sentence imposed by the trial Court, the petitioner has filed an appeal in Crl.A.(MD)No.356 of 2020. Along with appeal, the petitioner filed this petition for suspension of sentence till the disposal of the appeal.

3.On the side of the petitioner, it is stated that the occurrence is said to have taken place on 23.07.2018 but the father of the victim lodged the complaint on 31.07.2018. P.W.1, P.W.2 and P.W.2 are said to be victims. P.W.1 and P.W. 2 turned hostile. Two eye witnesses, P.W.12 and P.W.13 turned hostile. Only P.W.12 gave evidence before the Court. That evidence is also not supporting the case of prosecution. She has deposed that she has not seen the occurrence and the petitioner has not misbehaved with her and she was not at all studying at the school at the time of occurrence. Only to avoid the petitioner from contesting the diocese election, a false case was foisted against the petitioner by P.W.7 and prayed the sentence to be suspended.

4.On the side of the prosecution, it is stated that the prosecution has examined 22 witnesses and marked 23 documents. The deposition of P.W.3 supported the case of prosecution. The prosecution has proved the case beyond reasonable doubts and the trial Court has rightly convicted the petitioner. Though some of the witnesses turned hostile, there is presumption under POCSO Act. The motive suggested by the petitioner could not be accepted, since the victims are three in number and prayed the petition to be dismissed.

5.It is seen that the judgment was pronounced on 23.11.2020 and the petitioner is in custody for the past three months. Considering the period of incarceration and considering the fact that there are some arguable points for consideration in the appeal, this Court is inclined to grant suspension of sentence to the petitioner.

6. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended and the petitioner is ordered to be released on bail on the following conditions:-

(i)the petitioner is directed to execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the Special Court for Exclusive Trial of Cases under POCSO Act,



(ii) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Trial Judge may obtain a copy of any valid identity proof to ensure their identity ;

(iii) the petitioner shall appear before the Trial Court daily at 10.30 a.m., until further orders.

sd/-
24/02/2021

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/ /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 SPECIAL JUDGE FOR EXCLUSIVE TRIAL OF CASES
UNDER THE POCSO ACT, THOOTHUKUDI.

2 THE SUPERINTENDENT, CENTRAL PRISON,
PALAYAMKOTTAI, TIRUNELVELI DISTRICT.

3 THE INSPECTOR OF POLICE, ALL WOMEN POLICE STATION,
SRIVAICKUNDAM, THOOTHUKUDI DISTRICT.

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

+1 CC to M/s.N.PRAGALATHAN, Advocate (SR-1438[I] dated 25/02/2021)

ORDER

IN

CRL MP(MD) No.1515 of 2021 in
CrI.A.(MD)No.356 of 2020

Date :24/02/2021

Ls

MS/PN/SAR-2/25.02.2021/3P.6C