



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

Friday, the Twenty Sixth day of March Two Thousand and Twenty One

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) No.2610 of 2021
in
CRL A(MD)No.380 of 2020

ABDUL KHADAR

...APPELLANT/SOLE ACCUSED

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
NAGERCOIL, KANYAKUMARI DISTRICT.
CRIME NO.13 OF 2017.

... RESPONDENT/COMPLAINANT

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 and conviction imposed by the Learned Special Judge for Protection of Children from Sexual Offences, Nagercoil in Spl.S.C.No.59 of 2017 dated 18.11.2020 and enlarge the Petitioner on bail pending disposal of the above said Criminal Appeal.

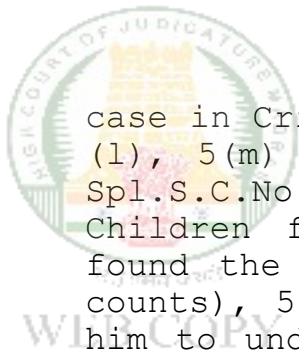
PRAYER IN CRL A(MD)No.380 of 2020:

Pleased to call for the records and set aside the sentence and conviction imposed by Learned Special Judge for Protection of Children from Sexual Offences, Nagercoil in Spl.S.C.No.59 of 2017 dated 18.11.2020.

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 Mr.S.CHANDRASEKAR, Additional Public Prosecutor on behalf of the Respondents, while admitting the Criminal Appeal, the court made the following order:-

This petition has been filed to suspend the sentence imposed by the learned Special Judge for Protection of Children from Sexual Offences, Nagercoil in Spl.S.C.No.59 of 2017 dated 18.11.2020, till the disposal of the appeal.

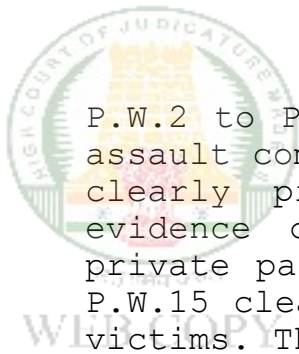
2.The case against the petitioner is that he committed penetrative sexual assault on 10-12 years three female children. A



case in Crime No.13 of 2017 was registered under Sections 4, 5(i), 5(1), 5(m) r/w. 6 of POCSO Act and the same was taken on file as Spl.S.C.No.56 of 2017 before the Special Judge for Protection of Children from Sexual Offences, Nagercoil. The Special Judge has found the petitioner guilty under Sections 4 (3 counts), 5(i) (3 counts), 5(1) (3 counts), 5(m) (3 counts) of POCSO Act and sentenced him to undergo eight years rigorous imprisonment per count and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) per count in default to undergo six months simple imprisonment under Section 4(3 counts) of POCSO Act and sentenced him to undergo ten and half years rigorous imprisonment per count and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) per count in default to undergo six months simple imprisonment under Section 5(i) (3 counts) of POCSO Act and sentenced the petitioner to undergo ten and half years rigorous imprisonment per count and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) per count in default to undergo six months simple imprisonment under Section 5(1) (3 counts) of POCSO Act and sentenced the petitioner to undergo ten and half years rigorous imprisonment per count and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) per count in default to undergo six months simple imprisonment under Section 5(m) (3 counts) of POCSO Act. Against the conviction and sentence imposed by the trial Court, the petitioner has preferred an appeal in Crl.A.(MD)No.380 of 2020. Along with the appeal, he has filed the present application for suspension of sentence pending disposal of the said appeal.

3.On the side of the petitioner, it is stated that the occurrence is said to have taken place on 24.04.2017 but the complaint was lodged only on 24.05.2017. The prosecution failed to explain the delay of one month. P.W.1 has deposed that she has written the complaint whereas P.W.2 and P.W.3 have deposed that P.W.5 has written down the complaint. The author of the complaint itself is doubtful. The evidence of P.W.1 reveals that a complaint was filed on the next day of the occurrence. The complaint filed on the next day of occurrence that is on 25.04.2017 was suppressed by the police and the complaint written by P.W.5 was also suppressed by the Police. The prosecution failed to prove the complaint itself. P.W.14 Forensic Department Officer has deposed that there is no sperm available in vaginal swab, which was taken from the victims. The investigating Officer has also admitted that there is no penetrative sexual assault. The petitioner is in custody for the past three months. The petitioner is aged about 60 years having physical ailments. The petitioner is in custody for the past four months and there are much more points for arguments in the appeal and prayed the sentence imposed upon the petitioner to be suspended.

4.On the side of the respondent, it is stated that the prosecution has examined 18 witnesses and marked 20 documents. The victims are aged about 10-12 years. P.W.1 is the mother of one of the victims and P.W.2 is the mother of the other victims died. The evidence of



P.W.2 to P.W.4 who are victims in the case proved the cruel sexual assault committed by the petitioner. The evidence of P.W.2 and P.W.3 clearly proves that there was aggregated sexual assault. The evidence of doctor clearly reveals the injuries caused on the private parts of the victims. Ex.P13 to Ex.P15 and the evidence of P.W.15 clearly proves that the injuries in the private parts of the victims. There is no possibility of sperm to be found in the vaginal swab after twenty four hours from the time of occurrence. The prosecution has proved the case beyond all reasonable doubts and prayed the petition to be dismissed.

5.It is seen that the petitioner is in custody for the past four months and there are substantial points in the memorandum of appeal, which require a detailed consideration by this Court. The Criminal Appeal is not likely to be taken up for final hearing in the near future. Hence, this Court is of the view that the petitioner herein is entitled to the relief of suspension of sentence.

6.Accordingly, 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) with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Special Judge for Protection of Children from Sexual Offences, Nagercoil.

(ii) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Special Judge for Protection of Children from Sexual Offences, Nagercoil, may obtain a copy of their valid identity card to ensure their identity card to ensure their identity.

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

(iv) if the aforesaid conditions are violated, this order automatically stands cancelled.

sd/-
26/03/2021

/ TRUE COPY /

/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

1.THE SPECIAL JUDGE FOR PROTECTION OF CHILDREN
FROM SEXUAL OFFENCES, NAGERCOIL.

2.THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
NAGERCOIL, KANYAKUMARI DISTRICT.

3.THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.

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

+1. C.C. to Mr.G.KARUPPASAMY PANDIAN Advocate SR.No.2668

ORDER
IN
CRL MP(MD) No.2610 of 2021
in
CRL A(MD)No.380 of 2020
Date :26/03/2021

MRN
TK/PN/SAR.1/29.03.2021/4P/6C