



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

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

WEB COPY

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) No.2526 of 2021
in
CRL A(MD)No.71 of 2021

MAARIKALAI

... PETITIONER/APPELLANT

Vs

THE 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 of 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 of 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.S.C.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 learned 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.

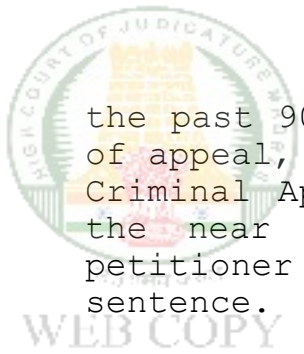


2.The case against the petitioner is that he committed sexual assault with two minor girls. A case was registered against the petitioner in Crime No.7 of 2017 and the same was taken on file as Spl. S.C.No.12 of 2018 before the Sessions Judge, Special Court for Exclusive Trial of POCSO Act Cases, Virudhunagar 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 alteration of the charges. There was no injury on the private parts of the victims. The procedure under Section 24 of POCSO Act was not followed by the prosecution. There is contradiction regarding the person who lodged the complaint. The age of the victims was not proved by the prosecution. Birth certificate of the victims were not produced. The petitioner is 64 years old, having physical ailments and he is in custody for the past 90 days and prayed the sentence to be suspended.

4.On the side of the respondent, it is stated that the trial Court is having power to alter the charges under Section 216 of Cr.P.C., without prejudice to the rights of the accused. The statements of the victims recorded under Section 164 (5) Cr.P.C. were marked as Ex.P17 and Ex.P18. The accident registers of the victims were marked as Ex.P7 and Ex.P8. The prosecution has examined 16 witnesses and marked 19 documents and marked six material objects and proved the case beyond all reasonable doubts and prayed the petition to be dismissed.

5.It is seen that the fine amount was already paid and that the receipt was also filed. The petitioner is in custody for



the past 90 days 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 Sessions Judge, Special Court for Exclusive Trial of POCSO Act Cases, Virudhunagar District at Srivilliputhur.

(ii) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Sessions Judge, Special Court for Exclusive Trial of POCSO Act Cases, Virudhunagar District at Srivilliputhur, may obtain a copy of their valid identity card to ensure their identity.

(iii) the petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m., until further orders.

sd/-
24/03/2021

/ 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.

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



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

3.THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

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

+1. C.C. to Mr.G.KARUPPASAMY PANDIAN Advocate SR.No.2491

ORDER IN
CRL MP(MD) No.2526 of 2021
in
CRL A(MD)No.71 of 2021
Date :24/03/2021

MRN
TK/PN/SAR.3/25.03.2021/4P/6C