



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

Friday, the Eighth day of January Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.4405 of 2020

IN

CRL A(MD) No.156 of 2020

KARUNANITHI

... PETITIONER/PETITIONER/
APPELLANT/SOLE ACCUSED/SOLE ACCUSED

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
THILAGAR THIDAL, MADURAI DISTRICT.
CRIME NO.21/2016

... RESPONDENT/RESPONDENT/
RESPONDENT/RESPONDENT/COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to pass an order to suspend the sentence as imposed on the petitioner by means of a judgement dated 31.01.2020 made in Spl.Sessions case No.44 of 2017 on the file of the Hon`ble Sessions Judge, Special Court for the Exclusive Trial of cases Under POCSO Act, Madurai forthwith and thereby enlarge him on bail, pending disposal of the above Criminal Appeal bearing C.A(MD) No.156 of 2020 on the file of this Hon`ble Court.

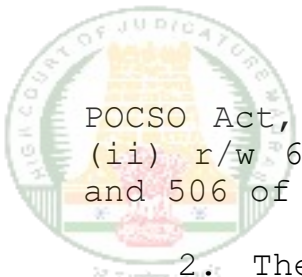
Prayer in CRL A(MD) No.156 of 2020:

To allow the above appeal and consequently set aside the impugned judgment dated 31.01.2020 passed by the Hon`ble Sessions Judge, Special Court for the Exclusive Trial of cases Under POCSO Act, Madurai in Spl. Sessions Case No.44 of 2017 forthwith.

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.S.PALANI VELAYUTHAM, Advocate for the petitioner and of MR.R.ANANDARAJ, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

[Order of the Court was made by K.KALYANASUNDARAM, J.]

The sole accused in Spl.S.C.No.44 of 2017 was tried by the Sessions Judge, Special Court for the Exclusive Trial of Cases under
<https://hcservices.ecourts.gov.in/hcservices/>



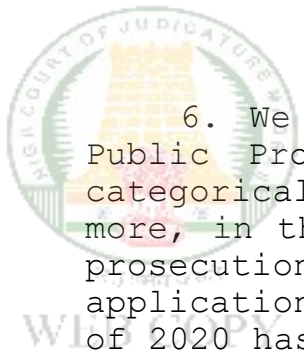
POCSO Act, Madurai for the offences punishable under Sections 5(j) (ii) r/w 6 of the Protection of Children from Sexual Offences Act and 506 of IPC.

2. The case of the prosecution is that P.W.2-victim is the daughter of P.W.1. She was aged about 14 years old and she was studying 9th standard in EVR School at that relevant time. On 01.11.2016, as P.W.2 complained stomach pain, P.W.1 took her to nearby hospital, where, it was found that she was in 7 months pregnancy and thereafter, she was taken to Madurai Government Rajaji Hospital on 03.11.2016 where, Gynecologist and Obstetrics department after examination found that she was pregnant for 7 months. She also delivered a girl baby in the Government Hospital on 19.02.2017. The allegation is that every Sunday P.W.2 used to attend RC Church along with her family and she also attended Bible classes. While so, the accused called P.W.2 and pushed her on a cot and committed rape on her. On another occasion, he pulled her hand and told her to come to upstairs, but she refused. These incidents could not be revealed to her parents because of the threat exerted by the accused.

3. Before the trial Court, the prosecution examined the victim girl as P.W.2 and the Deputy Director of Forensic Laboratory as P.W.13. Based on the evidence adduced by the prosecution witnesses, the trial Court found him guilty and sentenced to undergo life imprisonment with a fine of Rs.5,000/- under Section 5(j) (ii) r/w 6 of POCSO Act and sentenced to undergo one year rigorous imprisonment and also imposed a fine of Rs.2,000/- in default to undergo two months rigorous imprisonment for an offence under Section 506(i) of IPC. Challenging the conviction and sentence, the present appeal has been filed. Pending appeal, this application to suspend the sentence of imprisonment has been filed.

4. Mr.S.Palani Velayutham, learned counsel appearing for the petitioner would argue that the petitioner/accused is senior citizen about 70 years and at the relevant point of time, the victim is 14 years old. It is further stated that there was an enormous delay in lodging the FIR and even after P.W.1 came to know that P.W.2 was pregnant, the complaint has been lodged after a lapse of six months and the delay has not been properly explained by the prosecution. It is also submitted that the petitioner was in judicial custody for more than one year.

5. Per contra, Mr.R.Anandaraj, learned Additional Public Prosecutor would vehemently oppose the application contending that a fourteen year old girl was raped and impregnated by the accused. The evidence of P.W.2 and P.W.13 would reveal that the accused is a biological father of the child, hence no mercy can be shown on the accused. According to the learned Additional Public Prosecutor, the offence committed by the petitioner/accused has been proved beyond reasonable doubt before the trial Court and hence, he is not



6. We find force in the submission of the learned Additional Public Prosecutor that the evidence of P.W.2 and P.W.13 would categorically show that the victim was raped by the accused. Further more, in the nature of these offences, on the ground of mere delay, prosecution case cannot be rejected. More over, this is the second application for bail and the first application in Crl.M.P(MD)No.2989 of 2020 has been dismissed as withdrawn on 03.06.2020. Therefore, we are of the opinion that the petitioner is not entitled for the relief sought for in this petition.

7. In that view, this Criminal Miscellaneous Petition is dismissed.

sd/-
08/01/2021

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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 SESSIONS JUDGE,
SPECIAL COURT FOR THE EXCLUSIVE TRIAL OF CASES
UNDER POCSO ACT,
MADURAI.
- 2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
THILAGAR THIDAL, MADURAI DISTRICT.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON,
MADURAI DISTRICT, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.4405 of 2020
IN
CRL A(MD) No.156 of 2020
Date :08/01/2021

AM
JM/PN/SAR I/22.01.2021/3P/5C

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